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No. 01-370

Supreme Court, U.S.
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In The

# Supreme Court of the United States

JASON RICHARDS, ET AL.,

*Petitioners,*

v.

JEFFERSON COUNTY, ALABAMA, ET AL.,

*Respondents.*

**On Petition For A Writ Of Certiorari To The Alabama Supreme Court**

## APPENDIX TO JEFFERSON COUNTY'S BRIEF IN OPPOSITION

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**SUPREME COURT OF ALABAMA**

OCTOBER TERM, 2000-2001

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1991004

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Carnesa T. Parker

v.

Jefferson County

Appeal from Jefferson Circuit Court
(CV-99-3575)

(Filed Nov. 17, 2000)

MADDOX, Justice.

This appeal presents the following issue: Whether Jefferson County Ordinance No. 1120 (the "ordinance"), adopted September 29, 1987, imposes an occupational tax, which a county is permitted by Alabama law to impose, or whether the ordinance imposes an income tax, which

Alabama law prohibits a county from imposing.[1] We conclude, as did the trial judge, that the ordinance does not impose an income tax, and, therefore, is not prohibited by Alabama law. We affirm the judgment of the circuit court dismissing the action.

Carnesa Parker sued Jefferson County, alleging that the tax imposed by the ordinance was an income tax prohibited by Alabama law. Parker sought a complete refund, with interest, of all amounts she had paid to Jefferson County under the ordinance, and she sought to have a class certified under Rule 23, Ala. R. Civ. P., consisting of all persons who had paid the tax.

The crux of Parker's argument is that the United States Supreme Court, in *Jefferson County v. Acker*, 527 U.S. 423 (1999), determined that the ordinance imposes an income tax, and that the doctrine of collateral estoppel bars Jefferson County from relitigating this issue. The trial court correctly rejected Parker's argument.

> " 'Collateral estoppel requires (1) an issue identical to one litigated in the prior suit; (2) that the issue [have] been actually litigated in the prior suit; and (3) that the resolution of that issue have been necessary to the prior judgment. In addition, the parties must have been the same in both suits. Where these elements are present, the parties are barred from relitigating issues actually litigated in a prior suit.' "

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[1] See *Estes v. City of Gadsden*, 266 Ala. 166, 170, 94 So. 2d 744, 747 (1957) ("municipalities and counties being political subdivisions of the state have no inherent power of taxation but have only such taxing power as is delegated to them by the legislature").

*Jones v. Blanton*, 644 So.2d 882, 886 (Ala. 1994), quoting *Lott v. Toomey*, 477 So.2d 316, 319 (Ala. 1985). (Emphasis omitted.) We have carefully reviewed the record on appeal and have considered Parker's argument, and we conclude that she has failed to show that the doctrine of collateral estoppel should be applied in this case, as we shall now show.

The issue relating to Parker's argument in this case that the United States Supreme Court addressed in *Acker* was whether the ordinance was valid against federal employees, under the Public Salary Tax Act, 4 U.S.C. § 111. Under that Act, the United States "consents to the taxation of pay or compensation for personal service as an officer or employee of the United States . . . by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation." In *Acker*, two federal judges were challenging the Jefferson County ordinance.

In addressing this issue, the Court in *Acker* stated:

> "In *Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624 (1953), the Court held that a 'license fee' similar in relevant respects to Jefferson County's was an 'income tax' for purposes of a federal statute that defines 'income tax' as 'any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts,' 4 U.S.C. § 110(c). See 344 U.S., at 625, n. 2, 629. The Court so concluded even though the local tax was styled as 'a tax upon the privilege of working within [the municipality],' was not an 'income tax' under state law, and deviated from textbook income tax characteristics.

*Id.*, at 628-629; see also *id.*, at 629 Douglas, J., dissenting) ('Many kinds of income are excluded, *e.g.*, dividends, interest, capital gains. The exclusions emphasize that the tax is on the *privilege* of working or doing business in [the municipality].').

"As *Howard* indicates, whether Jefferson County's license tax fits within the Public Salary Tax Act's allowance *is a question of federal law.*"

527 U.S. at 438-39. (Last emphasis added.) After determining that the ordinance serves a revenue-raising purpose, not a regulatory purpose, the Court explained:

"We consider next the judges' argument that the wholesale exemption for those who hold another state or county license reveals the Ordinance's true character as a licensing scheme, not an income tax. If the tax were genuinely an income tax, they urge, those license holders would not be excluded, although they might be allowed to claim their other license fees as credits or deductions against the county tax. Alabama's enabling Act does not allow its counties to so provide; those otherwise subject to license or privilege taxes under Alabama's laws may not be reached by a county's occupational tax. See 1967 Ala.Acts 406, § 4. *The dispositive measure, however, is the Public Salary Tax Act, which does not require the local tax to be a typical 'income tax.' Just as the statute in* Howard *consented broadly to 'any tax measured by net income, gross income, or gross receipts,' 344 U.S., at 629, the Public Salary Tax Act consents to any tax on 'pay or compensation,' which Jefferson County's surely is.* The sole caveat is that the tax 'not discriminate . . . because of the [federal] source of the pay or compensation'. . . . "

527 U.S. at 441-42. (Some emphasis added.)

It seems apparent that, contrary to Parker's assertion, the Supreme Court in *Acker* addressed only one question: Did the ordinance violate the Public Salary Tax Act, a federal law? As the above-quoted portions of *Acker* indicate, the Court emphasized that the question it was addressing related to federal law, not state law. To further illustrate this point, the Court in *Acker* cited its prior decision in *Howard*, a case that had addressed an issue similar to the one presented by this appeal.

In *Howard*, the Court held that a Louisville, Kentucky, occupational tax or licensing fee was an "income tax" for purposes of the Buck Act (a federal law similar to the Public Salary Tax Act involved in the *Acker* case), despite the fact that the Kentucky Court of Appeals had held that the tax was not an income tax under Kentucky law, but was a tax upon the privilege of working within the City of Louisville. 344 U.S. at 628-29. The Court emphasized that the question it was addressing was "whether the tax [at issue] was an income tax within the meaning of the federal law." *Id.*, at 629.

The holding in *Acker* was similar to the holding in *Howard* – that the ordinance, which serves a revenue-raising function, did not violate federal law. The Court did not address the issue whether the ordinance was valid under Alabama law (i.e., whether the ordinance imposed an "income tax" that was impermissible under Alabama law).

Applying Alabama law, this Court has upheld ordinances similar to the ordinance at issue in this case, as imposing permissible "occupational" or "privilege" taxes

or "licensing fees" rather than impermissible "income taxes." See *Estes v. City of Gadsden*, 266 Ala. 166, 94 So. 2d 744 (1957), and *McPheeter v. City of Auburn*, 288 Ala. 286, 259 So. 2d 833 (1972). This Court has also upheld as constitutional Act No. 406, 1967 Ala. Acts (the Act under which Ordinance No. 1120 was promulgated), which authorized Jefferson County to levy a privilege tax "upon any person for engaging in any business [or occupation]." *Bedingfield v. Jefferson County*, 527 So. 2d 1270 (Ala. 1988).

After carefully studying the prior decisions of this Court, as well as the *Acker* and *Howard* decisions of the United States Supreme Court, we conclude that the trial court correctly dismissed Parker's action. Consequently, the judgment of dismissal is affirmed.

AFFIRMED.

Houston, Cook, See, Lyons, Brown, Johnstone, and England, concur.

HOOPER, C.J., dissents.

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**SUPREME COURT OF ALABAMA**

OCTOBER TERM, 2000-2001

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1991004

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Carnesa T. Parker

v.

Jefferson County

Appeal from Jefferson Circuit Court
(CV-99-3575)

On Application for Rehearing

PER CURIAM.

APPLICATION OVERRULED.

HOUSTON, SEE, LYONS, BROWN, JOHNSTONE, HARWOOD, WOODALL, and STUART, JJ., concur.

Moore, C.J., dissents.

MOORE, Chief Justice (dissenting).

I was not a member of this Court when it released its opinion of November 17, 2000, affirming the judgment of the trial court. I would grant the application for rehearing.

On November 29, 1987, Jefferson County adopted Ordinance No. 1120, a revenue-enhancing measure. Section 1(b) of that ordinance levied a charge on persons doing "any kind of work, the rendering of any kind of personal services, or the holding of any kind of position or job within Jefferson County." It excepted only (1) domestic servants working in private homes and (2) businesses, professions, and occupations for which license fees are required to be paid under certain named statutes. Section 2, entitled "License Fees Required," set the levy at ½ of 1% of "the gross receipts of each such person." When two federal judges challenged this ordinance in a federal court, Jefferson County asserted that the ordinance imposed an income tax and not a license fee. On its review of the judges' case, the United States Supreme Court stated: "The judges acknowledge that Jefferson County's Ordinance is valid if it 'imposes a true tax on . . . income,' but argue that the Ordinance ranks instead as an impermissible licensing scheme." *Jefferson County, Alabama v. Acker*, 527 U.S. 423, 439 (1999), citing Brief for Respondents 13-14, 27-33. The two plaintiffs, Judge William Acker and Judge U.W. Clemon, specifically referenced the label Jefferson County had used in titling § 2 – "License Fees Required." Jefferson County denied that that title had any meaning on the question whether the moneys collected under the ordinance were collected as fees or were collected as taxes. Jefferson County argued that the charge imposed was, in fact, an income

tax. The United States Supreme Court concluded: "In practice, Jefferson County's license tax serves a revenue-raising, not a regulatory, purpose. Jefferson County neither issues licenses to taxpayers, nor in any way regulates them in the performance of their duties based on their status as licensed taxpayers." *Jefferson County*, supra, at 440. The Supreme Court then upheld this ordinance – precisely because it accepted Jefferson County's contention that the ordinance imposed an income tax.

Now, before this Court, Jefferson County argues that this ordinance imposes a license fee, not an income tax. According to Carnessa Parker's counsel, "Jefferson County having defeated the claims of these federal judges that the tax is a licensing scheme by convincing the [United States] Supreme Court that it is an income tax now seeks to defeat Parker's claims that the ordinance is an income tax by claiming that it is a licensing scheme." Brief of Appellant, 7.

This case thus appears to present the classic foundation for the application of the doctrine of collateral estoppel. That is a kind of equitable relief arising from the need for judicial economy. In *Wheeler v. First Alabama Bank of Birmingham*, 364 So. 2d 1190, 1199 (Ala. 1978), this Court stated that when the parties in a subsequent case are identical to those in a prior case, the elements necessary for that doctrine to apply are: "(1) an issue identical to one involved in the previous suit; (2) an issue actually litigated in the prior action; and (3) resolution of the issue was necessary to the prior judgment." Then, in *Constantine v. United States Fidelity & Guaranty Co.*, 545 So. 2d 750,

755-56 (Ala. 1989), this Court wrote the following regarding when a decision in a previous case will bind parties in a later case:

> "[T]wo elements are required: 1) the *party claiming the benefit* of the prior judgment as an estoppel against the adversarial party is one who would have been prejudiced by a contrary decision in the previous case; and 2) the *party against whom the estoppel by judgment is sought* either was an actual party in the previous case or was in privity with, or is a successor to the rights of, an actual party in the previous case."

All of these criteria were met in *Jefferson County* and would normally enable Parker to use the doctrine of nonmutual offensive collateral estoppel to bind Jefferson County to the argument it made to the United States Supreme Court. However, Jefferson County has interposed § 100, Ala. Constitution of 1901, as a bar to the application of the doctrine against a county government.

The language of § 100 is ambiguous, and I question whether it reaches this kind of situation. Therefore, I would grant the application for a rehearing, in order to permit the parties to examine the scope of § 100. I am also troubled by the holding that Ordinance 1120 imposes a license fee, not an income tax. By the explicit terms of that ordinance, these taxpayers were obligated to pay a fixed percentage of their incomes, not a flat-rate amount. Similarly situated persons with different incomes would thus pay different sums. In *Estes v. City of Gadsden*, 266 Ala. 166, 172, 94 So. 2d 744, 749 (1957), this Court held that "[t]he character of any tax should be determined by its incidences and not by the name given it or necessarily

the language used." Therefore, I would grant the application for a rehearing on this basis as well.

*IN THE CIRCUIT COURT OF*
*JEFFERSON COUNTY, ALABAMA*

| | | |
|---|---|---|
| *JASON RICHARDS, et al,* | ) | |
| *Plaintiff* | ) | |
| *vs.* | ) | *CASE NO.: CV-92-3191* |
| *JEFFERSON COUNTY, et al,* | ) | |
| *Defendant* | ) | |

*REPORTER'S OFFICIAL TRANSCRIPT*

*BEFORE:*

*Honorable John E. Rochester*
*Presiding Circuit Judge*
*40th Judicial Circuit*
*Ashland, Alabama 36251*
*Sitting Specially*
*October 21, 22, 23, 1997*

* * *

*[401] BY THE COURT: Call your next witness, please.*

*MR. SLAUGHTER: Wayne Everette.*

*WAYNE EVERETTE*

*(THE WITNESS, AFTER BEING DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TOOK THE STAND AND TESTIFIED AS FOLLOWS).*

*EXAMINATION BY MR. STEWART:*

*Q. State your name, please.*

*A. I'm Wayne Everette.*

*Q. And where are you employed?*

*A. I am the chief financial officer at Birmingham Jefferson Civic Center.*

*Q. And what do you do as chief financial officer at the civic center?*

*[402] A. My responsibilities would encompass overseeing payroll, accounts payable, accounts receivable, cash management, investments, bonds.*

*Q. Are you in charge of overseeing the revenues and expenses of the civic center?*

*A. Yes, sir.*

*Q. And the civic center is a quasi-governmental entity located here in Birmingham, Alabama. Is that correct?*

*A. Yes, sir.*

*Q. Now long have you been employed by the civic center?*

*A. Two years.*

*Q. Prior to that, did you have an association with an accounting firm?*

*A. Yes, sir.*

*Q. Are you a certified public accountant?*

*A. Yes, sir.*

*Q. And your accounting firm had done some auditing work for the civic center?*

*A. Yes, sir.*

*Q. And so you had been familiar with the civic center [403] for how long?*

*A. Four years.*

*Q. Okay. Are you familiar with a series of – actually two bond issues that the civic center issued in the year 1989?*

*A. Yes, sir.*

*Q. And one of those that's referred to by the civic center as the 1989 bond issue and one the 1989B bond issue?*

*A. Yes.*

*Q. And what were those bond issues – what did the civic center use the money for?*

*A. We purchased a hotel. We built an office building. We built a parking deck and we also extended the civic center, which is called our exhibition hall.*

*Q. And in preparation for your testimony today, did I ask you to review the books and records of the civic center to get the current status of those bond issues?*

*A. Yes, sir.*

*Q. Did you prepare – let me show you what's been marked as Defendants' Exhibit 24 and ask if this [404] the document that you prepared in preparation for the testimony today?*

*A. Yes, sir.*

*Q. All right and let's just go through the columns in this. What was the original issue amount of the 1989 bond issue?*

*A. $83,710,000.*

*Q. And the 1989B bond issue the original amount?*

*A. $48,670,000 –*

*MR. BAXLEY: Your Honor, we have an objection on the relevancy.*

*MR. STEWART: Your Honor, this directly goes to the interest of the civic center in the case at issue. And the records should reflect the impact of the county occupational tax on the revenues of the civic center.*

*MR. BAXLEY: Your Honor, what they've done with the tax after they collected it has no bearing whatsoever on whether it's Constitutional.*

*MR. STEWART: That should have been argued [405] then when the civic center filed its Petition originally. This being the case and the financial impact of the occupational tax on the civic center is a critical issue in this case.*

*MR. BAXLEY: It's of no issue at all. Now they might have an interest in the outcome of the case, but that*

*doesn't mean that the evidence is material. And if they said that the state audited by ballfields all over the county. That wouldn't matter whether they put it in the civic center or in ball parks or built a theater or whatever they did with the tax money. So it's irrelevant as to whether it's Constitutional to collect it.*

*MR. STEWART: The thrust of this testimony goes directly not to how the county has chosen to use the money, but the civic center which has been made a part of this case. There's no objection from [406] the Plaintiff – it's a party to the Defendant in this case and it's relevant to the county as the occupational tax's impact on the civic center is an issue in this case. There's no other way.*

*BY THE COURT: I'm going to allow the testimony.*

*Q. And so the two total bond issues were in the amount of $132,380,000?*

*A. Yes, sir.*

*Q. Now, have you also in your calculations – how much of the principle amount of these bond issues has been paid to date by the civic center?*

*A. To date $27,495,000.*

*Q. And so the outstanding principle balance in total is how much?*

*A. $104,885,000.*

*Q. And do your records reflect the total amount of interest which has been paid to date by the civic center to bond holders?*

*A. Yes, sir.*

*Q. What is that total amount?*

*A. The total amount to bond holders is $72,057,876.*

*[407] Q. And the total remaining debt service to maturity of these bonds, have you calculated that figure and would you give us the total if you have it?*

*A. The total to maturity $161,138,076.*

*Q. Now, are you familiar with the manner in which the civic center is making the debt service payments on these bonds?*

*A. Yes, sir.*

*Q. Would you tell the Court just how does it work? For example, does the county submit a check and do you receive payment each year from Jefferson County and the City of Birmingham that is used to pay the debt service on these bonds?*

*A. Yes, sir. We receive two tax proceeds from the city and the county each year to go directly to the trustee of the bonds.*

*Q. Who is the trustee in the bond documents?*

*A. Sir?*

*Q. Who is the trustee?*

*A. NBC Bank.*

*Q. National Bank of Commerce?*

*A. Yes.*

*[408] Q. All right. And does the payment from the county and the payment from the city come to the civic center or does it go to the trustee?*

*A. Directly to the trustee.*

*Q. And then what does the trustee do with it?*

*A. The trustee pays the bond holders.*

*Q. They pay the –*

*A. To the bond holders.*

*Q. And those payments are due twice a year?*

*A. Yes, sir.*

*Q. And exactly how much money has the trustee received on behalf of the civic center from Jefferson County on these bond issues?*

*A. $85,000,000.*

*Q. And how much money has been received by the trustee from the City of Birmingham to date?*

*A. $16,500,000.*

*Q. $16,500,000?*

*A. Yes, sir.*

*Q. And as I understand it, the county – Jefferson County pays a total of $10,000,000 a year to the civic center?*

*[409] A. Yes, sir.*

*Q. And the City of Birmingham pays $3,000,000 a year.*

*A. Yes.*

*Q. And do you know how long those payments last?*

*A. The final bond maturity is 2012.*

*Q. And the original in the 1989 bond issue, the original agreement with the city was 20 payments of $3,000,000. Is that correct?*

*A. I'm not sure.*

*MR. STEWART: Your Honor, we would offer Defendants' Exhibit 24. That's the compilation that he just testified from.*

*BY THE COURT: Any objection?*

*MR. BAXLEY: Yes, sir, on relevancy.*

*BY THE COURT: Overruled. It's admitted.*

*Q. Wayne, I'm going to show you now a document that's marked as Defendants' Exhibit 23 and would you tell the Court what this document is?*

*A. This is an appropriation agreement between Jefferson County and the civic center.*

*Q. All right. And is this the agreement that was entered into in 1989 at the same time that the [410] bond issue that whereby the county agreed to pay the sum of $10,000,000 a year to the civic center?*

*A. Yes, sir.*

*Q. And this money was to be used as debt service for the 1989 and 1989B bonds?*

*A. Yes.*

*Q. And on page 4 of that agreement is there a payment schedule?*

*A. Yes, sir.*

*Q. And when did those payments start?*

*A. 1989.*

*Q. And when do they end?*

*A. 2008.*

*Q. And it's $10,000,000 a year from the 1989 through the year 2008?*

*A. Yes.*

*Q. All right.*

*MR. STEWART: We would offer Defendants' Exhibit 24.*

*MR. BAXLEY: Objection to relevancy, Your Honor.*

*[411] BY THE COURT: It's admitted.*

*Q. I show you what's been marked as Defendants' Exhibit #25 and ask if you're familiar with that document?*

*A. Yes, sir.*

*Q. Would you tell the Court what that document is?*

*A. It's the financial statement dated August 31, 1996.*

*Q. August 31, 1996. What is the fiscal year for the civic center?*

*A. August 31.*

*Q. September 31 through August 31 of the next year?*

*A. Yes.*

*Q. So, is this the last year – do you have the 1997 financial statement?*

*A. This is the last we have.*

*Q. Are you familiar with this document?*

*A. Yes, sir.*

*Q. Did you review this document?*

*A. Yes, sir.*

*Q. All right. Let me ask you this. The $10 million you receive each year from the county, which is [412] used to pay the debt service on the bond, if that payment – if those payments were to stop, does the civic center have revenue, dollars, monies available to make the remaining payments to the bondholders for 1989 or the 1989 bond indebtedness?*

*A. No, sir, we'd be in default. We could not service the debt.*

*Q. All right.*

*MR. STEWART: I would offer Defendants' Exhibit #25.*

*MR. BAXLEY: Object on the grounds of irrelevance, Your Honor.*

*MR. STEWART: As to relevance, Your Honor, we would argue that it reflects that the civic center, in fact, does not have funds available to make the payments if the revenues were not available.*

*BY THE COURT: I'll admit it.*

*MR. STEWART: Thank you, Wayne.*

*BY THE COURT: Cross examination, Mr. Baxley?*

*EXAMINATION BY MR. BAXLEY:*

*[413] MR. BAXLEY: Your Honor, we're asking questions and the only reason we're asking them, is we feel like, you know, we've gone into irrelevant matters. So we think this is going to answer it and we need to ask it.*

*BY THE COURT: Okay.*

*Q. Now, you say that the civic center would be insolvent if you didn't get the money from the county?*

*A. Yes, sir.*

*Q. Well, the civic center owns – you bought a hotel that you carry on the books worth right at $50 million, don't you?*

*A. Yes, sir.*

*Q. That's the Sheraton Hotel, isn't it?*

*A. Yes, sir, right next to us.*

*Q. It's operated as a Sheraton with ICC management or Sheraton management right?*

*A. Yes.*

*Q. And that hotel was there long before – it was there as a private hotel long before the civic [414] center authority bought it, wasn't it?*

*A. Yes, sir.*

*Q. It was there as the Hyatt House, wasn't it, before the civic center had anything to do with it?*

*A. Yes, sir.*

*Q. And then it changed over and became a Ramada, didn't it?*

*A. Yes, sir.*

*Q. And so now it's the Sheraton.*

*A. Yes.*

*Q. But the civic center – you say it's worth right at $50 million?*

*A. Yes.*

*Q. Well, if you stopped getting the revenue from this what we say, is an illegal tax, you could sell that hotel and knock out a big chunk of your bond issues, couldn't you?*

*A. That would offset the balance of the bond issues.*

*Q. And you say you have an office building also?*

*A. Yes, sir.*

*Q. And where's the office – how many stories is that?*

*[415] A. Ten stories.*

*Q. Ten stories. And do you lease part of that out?*

*A. Yes, sir.*

*Q. Who do you lease – who are some of your tenants?*

*A. Red Cross, BellSouth, a multitude of others.*

*Q. The civic center leases office space to BellSouth?*

*A. Yes, sir.*

*Q. When was the civic center built? The actual civic center where people could come and go watch events in the concert hall, the children's theater?*

*A. About '69.*

*Q. 1969?*

*A. Yes.*

*Q. So it was there almost 20 years before this tax that we're complaining about. Is that not correct?*

*A. Yes, sir.*

*Q. The hotel and the office building were bought after the tax that we're complaining about – after '87, weren't they?*

*A. Yes, sir.*

*Q. When was the hotel bought?*

*A. '89.*

*[416] Q. When was your office building constructed and bought?*

*A. We started construction in '89.*

*Q. Did I hear you say that you're a CPA?*

*A. Yes, sir.*

*Q. You have a license in Alabama?*

*A. Yes, sir.*

*Q. Are you required to pay the occupational tax?*

*A. Yes, sir.*

*Q. Sir?*

*A. Yes, sir. As a civic center employee I have to pay it.*

*Q. Who makes the determination?*

*A. I can't answer that.*

*Q. It's deducted from your tax?*

*A. Yes, sir.*

*Q. All right. Which firm did you work for before you went to work with the civic center authority?*

*A. Warren (unintelligible)*

*Q. Is that the firm that did the audit here?*

*A. Yes.*

*Q. If you worked for one of the big two – or any [417] private CPA firm, would you have to pay the occupational tax?*

*A. I did not pay it.*

*Q. You did not pay it?*

*A. No.*

*Q. Okay.*

*MR. BAXLEY: That's all.*

*MR. STEWART: One further question, Your Honor.*

*EXAMINATION BY MR. STEWART:*

*Q. Mr. Baxley asked you about the purchase of the hotel and the construction of the office building, those purchases and the expansion of the hotel has actually doubled in size after the 1989 bond issue Is that correct?*

*A. Yes.*

*Q. The '89 bond issue funded the purchase and the expansion of the hotel and the building of the office building. Is that correct?*

*A. Yes.*

*Q. And one of the purposes of doing that was to try to generate more revenue than this more traditional civic center type operation could produce. [418] Therefore benefiting the city and county –*

*MR. BAXLEY: Object to a leading question.*

*BY THE COURT: Sustained.*

*MR. STEWART: Thank you, Your Honor.*

*BY THE COURT: May he be excused?*

*MR. STEWART: Yes, sir.*

*BY THE COURT: You're free to go. Call your next witness.*

*MR. SLAUGHTER: Mr. Godeke.*

*RANDALL GODEKE*

*(THE WITNESS REMAINS UNDER THE PREVIOUSLY ADMINISTERED OATH)*

*EXAMINATION BY MR. SLAUGHTER:*

*Q. Mr. Godeke, I have just handed you a document which I would appreciate your identifying.*

*A. This is a declaration of Randy Godeke that I prepared and was entered as Director of Revenue.*

*Q. What – it has attached to it an exhibit and to what calendar year does that exhibit apply?*

*A. 1994 – Calendar year.*

*Q. And can you describe that exhibit or describe in your own words what it purports to demonstrate?*

*A. Sure this is a statistical sampling of various [419] types of employers, listing different companies under various categories and shows the number of employees, the gross wages, the wages subject to the occupational tax, and percentage of wages subject to the occupational tax. And then a designation of a code beside it that indicates the amount of wages or reasonable wages subject to the occupational tax.*

*Q. This schedule was prepared under your supervision?*

*A. Yes, it was.*

*Q. Was it prepared from documents pertaining to the revenue collection and enforcement of the occupational tax?*

*A. Yes.*

*Q. Can you describe the circumstances which lead to the need for submission of this document to the U.S. Supreme Court?*

*MR. BAXLEY: Object, Your Honor.*

*BY THE COURT: What grounds?*

*MR. BAXLEY: To ask him to describe the circumstances that lead to the need, Mr. Slaughter, that it ought to be [420] submitted to the Supreme Court of the United States?*

*BY THE COURT: Do you object to it?*

*MR. BAXLEY: Well, Your Honor, he's going to say that he filed something that was wrong and we feel like he –*

*MR. SLAUGHTER: Well, it's related to the identification of the occupational tax revenue which is still something that may be in issue in this case. And it's for that reason that we offer it as well as a supplement to the declaration.*

*MR. BAXLEY: I withdraw the objection.*

*BY THE COURT: All right. You may answer.*

*A. It shows the various types of employers such as utilities, banks, railroads, insurance companies, doctors offices, and other categories listed to pay the occupational tax.*

*Q. In other words, their employees pay the occupational tax.*

*A. Yes, the employees of those companies.*

*Q. Okay. As the tax collector – let's assume the law [421] firm like Mr. Baxley's law firm and my law firm, we have lawyers employed there and we have non-lawyers employed there. Is it your understanding that the non-lawyers pay the occupational tax?*

*A. Correct.*

*Q. The lawyers do not pay the occupational tax.*

*A. Correct.*

*Q. And what is the reason they do not pay the occupational tax?*

*A. The attorneys in most cases are required to have a state license under Title 40 Chapter 12.*

*Q. If you look at this schedule, you will see that the various reports submitted by these companies for that year would show a total amount of gross wages. And then they will withhold the occupational tax on part of those wages and, for some companies, not all, it's not the full amount. In other words, if you turn to the first page of your exhibit, the very*

*first entity there is Alabama Power. Now, is that your understanding that the county does not have the power, under state law, to tax levy a business license tax on a utility.*

*[422] such as Alabama Power?*

*A. I'm sorry. I missed your question.*

*Q. Does the county levy, under its business license code or any – in any way that you know of or that you're responsible for collecting, a privilege or license tax on a utility company such as Alabama Power?*

*A. Not on the company itself.*

*Q. Okay. So you do not tax the company itself.*

*A. No.*

*Q. But you do tax the employees as is shown by this schedule?*

*A. Yes.*

*Q. The difference between gross wages and wages subject to the occupational tax shown on this is the result of exemptions that result from individuals paying license taxes to the state?*

*A. Under the far right column it's coded "A" which means that the difference between the gross wages and the wages subject to the occupational tax were determined to be professional license and out of county work.*

*[423] Q. So there are two reasons why it's less than 100 percent?*

*A. Yes.*

*Q. They run the payroll here but they've got people working in Shelby County and other places.*

*A. Right.*

*Q. And then another reason is the exemption of the professionals.*

*A. Correct.*

*Q. But except for exemptions of that identifiable nature, there is no blanket exemption of the employees of those companies?*

*A. No.*

*MR. SLAUGHTER: We would like to offer this as Exhibit 7.*

*BY THE COURT: Do you object?*

*MR. BAXLEY: No, sir.*

*BY THE COURT: It's admitted.*

*Q. Mr. Godeke, what is the document I just handed you?*

*A. This is an up-to-date version of the 1996 calendar year ending of the same report showing the various categories and companies with number of employees, [424] gross wages, taxable wages and percent taxable.*

*Q. So it's a 1996 version of the schedule we just discussed showing the same taxation?*

*A. Yes.*

*MR. SLAUGHTER: We would like to introduce this as Exhibit 8.*

*BY THE COURT: Any objection to 8?*

*MR. BAXLEY: No.*

*BY THE COURT: It's admitted. Any other questions?*

*Q. Could you describe the document I just handed you?*

*A. Yes, this is a report prepared at my request by Tom Meacham a senior officer in my department that is a statistical reports on total progress and attached is a listing of the various license sections under Title 40 and the license schedule under the county ordinance of the various sole proprietors whose records are maintained through my office.*

*Q. If we go down the first column of this exhibit, under license description, where is says license section, I take it those license section numbers [425] correspond to the state license code?*

*A. Yes, Title 40 Chapter 12.*

*Q. In other words, that refers to or describes the state business licenses that you've levied for the state and/or the county?*

*A. That's correct.*

*Q. Could you describe for me the significance of the asterisk on each of these license sections?*

*A. Those are categories within that section that to paraphrase or quote exactly it says no official license shall be bid through the county. You could see by the third column where it says county amounts. The amount of those licenses are zeroes.*

*BY THE COURT: Excuse me just a minute. You're welcome to be in Court but let's keep our conversations on the*

*outside please. The back corner – let's carry our conversation outside. If you want to talk, you're welcome to out there. Thank you. Go ahead.*

*Q. For these asterisked professionals you, as the county license director of revenue, you collect [426] these monies for the state?*

*A. Yes.*

*Q. But you keep nothing for the county because nothing is allocated to the county under those license sections.*

*A. That's correct.*

*Q. Turning to page 4 of this report, begin looking at the first column. All of those license taxes there they're county licenses?*

*A. Yes.*

*Q. How are they levied? Pursuant to what authority?*

*A. Act 406.*

*Q. When you say Act 406, pursuant to the business license code ordinance or the occupational tax?*

*A. The business license.*

*Q. Do you – how do you handle the state license taxes on attorneys?*

*A. We do not collect any proceeds from attorneys any longer as of I'd say three or four years ago.*

*Q. Is that the only professional license tax that goes to the state for which the collection responsibility has been moved?*

*[427] A. That I'm aware of, yes.*

*Q. How do you determine that these licenses were issued to sole proprietors?*

*A. The individual or the company, as far as that goes, must file an application for a license through our department. On the application they must designate whether they are sole proprietors, corporations, partnerships, LTD. So they would self declare what category that they're applying for a license under.*

*Q. Do any of the licenses that are described here by various categories, single store license for which, for example, there are 2724. That means 2724 people that are operating some kind of retail establishment as a sole proprietorship?*

*A. Yes.*

*Q. Would such a person pay any kind of – in any amount under the county's occupational tax here at issue?*

*A. No occupational tax.*

*Q. So this is the list by category of people who are not taxed under the occupational tax because [428] they're self employed and they are obtaining a business license tax as an individual?*

*A. That's correct.*

*MR. SLAUGHTER: We would like to introduce this, Your Honor, as Exhibit 9.*

*BY THE COURT: Any objections?*

*MR. BAXLEY: No.*

*BY THE COURT: It's admitted.*

*Q. Mr. Godeke, what is the document I've just given you?*

*A. The document that you've given me is a document prepared in our department showing the occupational tax collected by fiscal years ending on September 30 each year since the inception in 1988.*

*Q. It has a schedule at the bottom by years?*

*A. Yes, it actually shows the dollar amount and at the bottom by year and then it shows a total collected since 1988.*

*Q. So this is the documentation of a cumulative amount collected under this tax?*

*A. That's correct.*

*MR. SLAUGHTER: We would like to introduce [429] this, Your Honor, as Exhibit 11 – I mean Exhibit 10, I'm sorry.*

*BY THE COURT: Any objections?*

*MR. BAXLEY: No, sir.*

*BY THE COURT: It's admitted.*

*Q. Mr. Godeke, what is the document I've just handed you?*

*A. This is another internal report prepared by staff members showing variations of the amount of participants of the occupational tax by years with some assumptions made on various relations I guess you would say. Well, at maturation I might want to know how many active participants we've had on the occupational tax since 1988.*

*Q. Why can't you just count them?*

*A. Under the mechanics of what we have, every company is supposed to report an annual reconciliation back to us in the month of January. It is a very cumbersome task, various non-compliance as far as when they remit the reconciliations. It would just be monumental. We would have to do an audit or follow up to each individual one to determine the [430] number of participants.*

*Q. How do you handle those taxpayers who are not subject to a state or county business license and who, therefore, as individuals pay the occupational tax without it being withheld by the company?*

*A. (no response)*

*Q. Do you have a separate account for them?*

*A. Yes, they have an individual account with us.*

*Q. So you could count those?*

*A. Yes.*

*Q. You have a record of that?*

*A. Yes.*

*Q. The problem in tallying, if I understand you, comes from all of the payers of the occupational tax for which the large companies and small companies withhold?*

*A. Correct. Then the reconciliation includes all the employees for that particular area during any one year and I think the numbers, if they report them on the reconciliation, includes the total employment for that year – maybe not the [431] active participants as of December 31.*

*Q. Why is this a – what is the rationality of these assumptions in estimating how many taxpayers we had since the inception of this tax?*

*A. This was the base established in an attempt to determine how many total participants we had in case we would have to contact them individually.*

*Q. If you did have to contact them individually, is there any, way, that you could have gotten the names and address of each?*

*A. Yes. Again, the annual reconciliations report in various formats. A lot of them send in copies of the W-2s, some of them send in computer-generated reports with names and addresses.*

*Q. But you don't keep a running tally of all these taxpayers because most of it is collected by withholding?*

*A. That's correct.*

*Q. But if compelled to do so, you could go back –*

*A. Expand our computer system to maintain individual employees, yes, sir.*

*MR. SLAUGHTER: Your Honor, we'd like to [432] admit this as Exhibit 11.*

*MR. BAXLEY: Well, on that one I just don't see the relevancy, Judge. We would object.*

*MR. SLAUGHTER: Your Honor, it may be relevant to you in trying to fashion a remedy in this case because it basically gives some basis for the debate which has been going on as to how many people may actually constitute the universe*

*of people we're going to be trying to satisfy in some way or another.*

*MR. BAXLEY: Your Honor, if it would help fashion a remedy, we withdraw our objection, I guess.*

*BY THE COURT: It's admitted.*

*Q. Mr. Godeke, could you describe the document I've just given you?*

*A. Yes, it's another internal report prepared at my direction to determine the – well, it's really similar to the earlier report showing the license sections that are not required to pay the [433] occupational tax under the Title 40, showing the number issued, the state amount, county amount, total licenses. Then we went in and added an average hourly wage to determine what potential amount the occupational tax would be if those exemptions were not in place.*

*Q. Why, did you – where did you get these hourly wage figures?*

*A. From the State Department of Industrial Relations.*

*Q. Is that your understanding – or it is your understanding that that's the same source of wage data that was earlier admitted in this case?*

*A. Yes.*

*Q. So it appears that your department and Plaintiffs' counsel are using the same source for wage data?*

*A. Yes.*

*Q. You said an earlier report. What earlier report?*

*A. I forget what exhibit number it was –*

*Q. Well, why was that earlier – there's been no earlier report.*

*A. Of the exhibits.*

*Q. Oh, okay. I was wondering if there had been an [434] earlier attempt on the part of your department to determine how much was lost to these professionals.*

*A. I think there was a calculation done back in '94. This is a figure through 1996.*

*Q. I notice on the back page, page 2 of this, that attorneys are a separate line item. Why is that?*

*A. Once again, we do not collect any license fees through our office for attorneys so we have to get in touch with the State Bar Association to determine the number of attorneys in Jefferson County.*

*Q. So the grand total on page 2, what does that represent?*

*A. The grand total in the far right hand column of $4,777,000 represents an extension of the hourly wage by the number of various licenses issued for that category times the amount of the occupational tax of 1/2 of 1 percent that would be levied.*

*Q. And based on wage data supplied by the State Industrial Relations Department, this is your best estimate of what additional revenues could [435] be raised by Jefferson County if all of these exempt professionals were subjected to the occupational tax?*

*A. Yes, sir.*

*MR. SLAUGHTER: Your Honor, we would like to admit this as Exhibit 12.*

*BY THE COURT: Any objections?*

*MR. BAXLEY: None.*

*BY THE COURT: It's admitted.*

*MR. SLAUGHTER: I have no further questions.*

*BY THE COURT: Any further cross examination?*

*EXAMINATION BY MR. BAXLEY:*

*Q. Would you gather up these exhibits that he's asked you about and let me just ask you a few questions about them to help me? What number is this one, Defendants' 9?*

*A. Uh, yes, sir.*

*Q. Is that one, according to your calculations, show that there are only 209 barbers in Jefferson County?*

*A. Sole proprietor barbers, yes, sir.*

*Q. Okay. Now, the barbers then that work for like [436] Fantastic Sam's and these other chains, they would be paying the occupational tax. Is that right?*

*A. Yes.*

*Q. Okay. Well, then, tell me what is the rational distinction – no, no, let me strike that – the question that they kept asking on cross are barbers that cut hair in Jefferson County as sole proprietors, stand on their feet the same number of hours per week, treated the same as far as the occupational tax goes, as barbers that cut hair for Fantastic Sam's and stand on their feet and cut hair for the same number of hours?*

*A. The only difference to me is they are required to have a license because they are sole practitioners.*

*Q. Okay. So the answer, then, is they are not treated the same as far as the county occupational tax is concerned, are they?*

*A. One is required a business license, the other one is required to pay the occupational tax.*

*Q. So one pays the occupational tax and the other [437] one doesn't.*

*A. In your example, yes.*

*Q. Okay. Let's take beauticians. The same answer there?*

*A. Yes.*

*Q. Okay. Tell me where you got this number where it says on the last page – no, it's not the last page – it's page 3. You've got five stockbrokers.*

*A. Page 3?*

*Q. Page 3.*

*A. Okay. Section number?*

*Q. 162.*

*A. Okay.*

*Q. What does that mean where you say five stockbrokers?*

*A. Evidently there are five sole proprietor stockbrokers in Jefferson County with a license as a sole practitioner.*

*Q. Okay. So, then, under your system five of them would be exempted from paying?*

*A. Yes.*

*Q. Okay. How many – what about a stockbroker that [438] works for Merrill Lynch or Payne Webber or Sterne A.G., Robinson Humphrey?*

*A. They would not be sole practitioners so they would be subject to the occupational tax.*

*Q. So they would pay the occupational tax.*

*A. Yes.*

*Q. Okay. So a stockbroker – stockbrokers move about, don't they?*

*A. I imagine so, yes, sir.*

*Q. So a stockbroker that works for Merrill Lynch say, would pay an occupational tax and a stockbroker that works for one of these five stock firms as sole proprietorships would not pay it?*

*A. No, no, that's not the case.*

*Q. Okay. What is the case?*

*A. If they work for one of these five businesses, they would be subject to it.*

*Q. They would be subject to it?*

*A. Right.*

*Q. But the man who owns them would not be subject to it?*

*[439] A. Right. He is the sole practitioner.*

*Q. Okay. Well, then, when it says court reporters 33. What does that number include? Does that include visiting court reporters that come over for two days?*

*A. That would indicate there are 33, again, sole practitioners licensed through our department.*

*Q. Who do not pay it now?*

*A. That are required to have a license, business license, as opposed to the occupational tax.*

*Q. So if they pay a business license, they do not have to pay the occupational tax?*

*A. Correct.*

*Q. What if they work here in the Jefferson County Courthouse? Do they pay it?*

*A. Yes, wages earned in Jefferson County.*

*Q. Okay. What if they work in the Federal Courthouse? Do they pay it?*

*A. Wages earned in Jefferson County.*

*Q. Okay. What if they are an employee of one of the large private court reporting firms like Foshee and Turner or those like that? Would they pay it [440] if they're an employee of one of those private firms?*

*A. If their wages were earned in Jefferson County, yes.*

*Q. They would pay it. But if they owned a court reporting firm and worked the same number of hours and did the same number of work per week, took the same number of depositions, but they work for a firm they own, they would not pay the tax?*

*A. They would be required to have a business license and not pay the occupational tax.*

*Q. How much would their – how much is their business license?*

*A. Uh, I'd have to look in the county code.*

*Q. Look at Exhibit #7, if you could. 7 is the little red one. For instance, what does a court reporter that does not have to pay the occupational tax pay?*

*A. It depends on the various scale, less than 5000 it would be $15. Then it goes into a formula and calculation depending con the amount generated.*

*[441] Q. Okay. What if they generate in billing $50,000 a year?*

*A. $75 plus 1/2 of 1 percent in excess of $30,000 so that would be 1/10 of 1 percent of –*

*Q. $20,000?*

*A. $20,000.*

*Q. Plus $75?*

*A. Plus $75, yes.*

*Q. So that would be, what, 1/10 of – 1 percent of $20,000 – or 1/10 of 1 percent is what?*

*A. I don't have a calculator or anything to scribble on.*

*Q. Wouldn't it be $20?*

*A. $20 I believe.*

*Q. So, a court reporter's license might be $95.*

*A. Correct.*

*Q. But if they work for the federal government they'd pay a half of a percent of their salary?*

*A. For those wages earned in Jefferson County.*

*Q. Okay. What if they earned all their wages in the Jefferson County Courthouse or the Federal Courthouse?*

*[442] A. They would all be subject to the ½ of 1 percent.*

*Q. Okay. And if their billings were in Jefferson County, that would be – and it's $6,000 worth of billings, they'd pay $95?*

*A. If they were required to have a license under Section 27.*

*Q. Where do you get the number of real estate agents from in these exhibits?*

*A. Based On the applications of the individuals filed with us that are claiming to be sole proprietors.*

*Q. Okay. Page 5 of this exhibit shows 1575 real estate agents?*

*A. Yes.*

*Q. Now, that would be that are sole proprietors?*

*A. Yes.*

*Q. Okay. What about the agents that work for Johnson, West, Page and Ray and Company and Good Housekeeping real estate agencies? They would not be in there?*

*A. Probably would not be in here because the selection criteria was sole proprietorship.*

*Q. Okay. Now, the real estate agents – this is a [443] projection here of what would come in if they had to pay it. Is that right? By, this I mean Exhibit #7 – Defendants' 9, I'm sorry.*

*A. Yes.*

*Q. One of your figures shows there are 3629 attorneys in Jefferson County?*

*A. That's correct, based on the number furnished by the State Bar Association.*

*Q. And they don't pay anything in the way of the occupational tax?*

*A. No.*

*Q. Do you think those attorneys and their families have any use for the Sheriff's Department services in Jefferson County to the same extent as a barber that pays the tax or a court reporter that pays the tax?*

*A. I would imagine they would demand that, yes.*

*Q. Do you think they would have any less use for the civic center or the roads of Jefferson County or any other service of Jefferson County than a person that's a member of a union that works at a salaried job?*

*[444] A. I wouldn't think so, no.*

*Q. Okay. How many doctors do your records show there are in Jefferson County?*

*A. Under Section 126, Title 40, we show 1867.*

*Q. So, according to your records, there's only a third the number of doctors that there are lawyers in Jefferson County?*

*A. 1800 compared to what 3600?*

*Q. How many did you say? How many doctors did you say?*

*A. 1867.*

*Q. I'm sorry. I thought you said 1200, I'm sorry. You said 1800?*

*A. Yes.*

*Q. You say there are only half the number of doctors in Jefferson County as there are lawyers?*

*A. That's what this report indicates, yes.*

*Q. Okay. What about dentists? How many dentists does it show in Jefferson County?*

*A. 281 dentists under Section 92.*

*Q. All right. Under every section that's conceivably there, how many dentists are there in Jefferson County?*

*[445] A. I don't understand that.*

*Q. How many dentists, according to your records, are in Jefferson County?*

*A. 281.*

*Q. 281. And you think that there are only 281 dentists in this county of several hundred thousand?*

*A. That's what this report would indicate, yes.*

*Q. What about the number of nurses that are in this county? Do you know how many nurses are in this county?*

*A. Yes, sir. You have a selection of criteria based on sole proprietors.*

*Q. Okay. What about pharmacists? How many pharmacists are in Jefferson County?*

*A. Under County Ordinance Section 34 there is one sole proprietor for Jefferson County.*

*Q. So, according to the county's records, there's one pharmacist, sole proprietorship, in Jefferson County.*

*A. Well, according to this, there's one license issued under prescription shop as a sole proprietor, yes.*

*Q. Okay. Is that what you're basing your testimony [446] about the money that's come in on, those type figures?*

*A. Those figures have been extended in the subsequent columns.*

*Q. What about the pharmacists that work for Harco or Eckerds or Revco?*

*A. They would not be on here because they're currently paying the occupational tax.*

*Q. They are?*

*A. Yes, sir.*

*Q. Okay. Now how many of them are paying the tax?*

*A. I have no way to determine that figure from these reports.*

*Q. Does anybody in the county have any records on which they can determine how many pharmacists are paying the occupational tax?*

*A. Unless they would be a regulatory agency to keep up with that, I would not have any way of determining that.*

*Q. Is there agency of the county that you know of that is able to determine how many are paying it?*

*A. Individuals, now, if you're asking how many of those [447] individuals submitting those records to an agency are pharmacists, those reports do not indicate their titles.*

*Q. Is there any way, if the lawyers decide, or the Court or the Supreme Court of Alabama or the Supreme Court of the United States wanted to find out how many pharmacists in Jefferson County pay the occupational tax, is there any way on God's green Earth they can find out?*

*A. Sure.*

*Q. How?*

*A. You would have to do an audit of all the various accounts that are paying the occupational tax. Go to them one on one, solicit them with some type of questionnaire or an audit, to determine the number of employees reporting on the annual reconciliation how many of those were pharmacists.*

*Q. So you'd have to do an interview one-on-one, according to your testimony, with some 425,000 people?*

*A. No, sir.*

*Q. Okay. How many?*

*[448] A. We've got 18,000 active accounts who pay – such as Jefferson County. Jefferson County pays me one check every month for the occupational tax. So behind that, that represents payment for roughly 4000 employees. So we would contact, in this scenario here, we would contact Jefferson County paymaster to tell us how many pharmacists were in that group of 4000.*

*Q. All right. How would Jefferson County know how many pharmacists were in their group that they submit?*

*A. I'm sure they have pay records which also include titles or positions that tie them in with human resources or the personnel department.*

*Q. Wouldn't it be a lot simpler on the administration of the tax and on you if just everybody that worked in Jefferson County paid a half of a percent or a quarter of a percent on what they made in Jefferson County?*

*A. It's very simple to me now. Either they're required a license under the state or county ordinance or they're required to pay the occupational tax.*

*[449] Q. All right. So you think it's simple now?*

*A. For the majority of it, yes.*

*Q. All right. Let's talk about preachers. Preachers at my church, Vestavia Hills United Methodist Church, are they subject to the tax?*

*A. I don't know for a fact this particular situation but he would not be subject to it. I don't know that for a fact.*

*Q. All right. What about at my wife's church which is St. Peter's Catholic Church? Do you know whether the priest there would pay or not?*

*A. I don't know precisely if they are paying it but they are not subject to it.*

*Q. They would not be subject to it? Why would either of those not be subject to it?*

*A. Assuming again they're ordained ministers and priests under advice of the county attorney we do not exercise that.*

*Q. All right. What if you're a – you know, we have a pretty large population at the medical center at UAB of people from the country of India who work there, don't we?*

*[450] A. I would imagine so, yes.*

*Q. Do you think that some of those people from India that work in the medical center may be Hindu?*

*A. I would have no idea.*

*Q. Do you know whether they have a church of that denomination or whatever you'd call an equivalent of a church in the Hindu faith?*

*A. Personally I do not know.*

*Q. Do you know whether we have any Buddists temples in Birmingham?*

*A. Personally I do not know, no.*

*Q. I notice on here in Homewood there's a Shrine going up to Ruth Crisps Steakhouse directly to a Moslem temple. Do you know whether we have any Moslem temple in Jefferson County?*

*A. I've seen that shrine and I don't know whether we have any temples in Jefferson County. I would probably think so somewhere in Jefferson County.*

*Q. Do you know whether the equivalent of a minister at any of those faiths that I've mentioned would be subject to the occupational tax?*

*A. I'm not that familiar with all the religions. [451] It would take a review of the situation to make that determination.*

*Q. And some you think – how would you make a determination if they would or would not?*

*A. If their religion recognizes that as an equivalent of an ordained minister in the Methodist church,, you know, after we reviewed the situations, we would probably take that into consideration.*

*Q. So you would apply it to what the standard is in Christianity whether they are ordained ministers?*

*A. Generally, but there is probably some other, you know, dialog included with the individuals.*

*Q. All right. Let's go – the Quakers or Society of Friends. Do you know whether they ordain ministers?*

*A. No, sir.*

*Q. Do you know whether the Mormons ordain ministers?*

*A. No, sir.*

*Q. Do you know whether any – what about the employees of these various churches? The sexton or the organist or the minister of music or choir director or the missionaries? Do you know whether they pay [452] occupational taxes?*

*A. The choir director, staff personnel would be subject to the occupational tax.*

*Q. Do you know whether they actually pay it?*

*A. I believe I've seen some documentation that indicates yes.*

*Q. Okay. Then, how is the distinction made that the minister does not pay but the minister of music does?*

*A. That was in place prior to 1991 and I understand that was through the advice of the county attorney.*

*Q. Is it true that the county, a couple of years ago, agreed to keep all records of taxpayers, names, addresses, and amounts paid, and not allow them to be discarded in the event a refund was ordered?*

*A. Yes, sir.*

*Q. And so they're in storage somewhere?*

*A. Various places, yes, sir.*

*MR. BAXLEY: That's all, Your Honor.*

*BY THE COURT: Anything else?*

*MR. SLAUGHTER: Yes, sir, Your Honor.*

*EXAMINATION BY MR. SLAUGHTER:*

*[453] Q. Mr. Godeke, I would like to read to you the first sentence of Section 1249 which deals with the state privilege taxation of attorneys. Each attorney engaged in the practice of law shall pay an annual license tax to the state but none to the county. Let's take an individual like Mr. Paul Jones who is the chairman of the board of Compass Bank and who used to practice law and I understand maintains his licensure to the state bar. But, to my knowledge, he runs Compass Bank. He does not practice law. Does he pay the occupational tax?*

*A. Yes, he does, in his current position.*

*Q. Could the fact that attorneys often perform jobs that business people, as executives and other functions other than practicing law, account for the large number of licensed attorneys who are listed in your schedule or who really don't practice law?*

*A. Yes, that's a possibility.*

*Q. With regard to this individual proprietorship. How do you define an individual proprietorship?*

*A. Once again, it's based on the application submitted [454] to us by the individual on the application process.*

*Q. What does that application show? Individual, corporation, partnership –*

*A. It has seven or eight different categories and one of them is a partnership, one is a sole proprietor, one is a corporation.*

*Q. Is a sole proprietorship classification then an individual who, if he owns a barber shop or a real estate company or whatever, he owns it as an individual. He does not own it as a corporation?*

*A. Yes.*

*Q. So a sole proprietorship, in your view, does not include a corporation who has as its sole employee the sole owner of the corporation?*

*A. No, sir.*

*MR. SLAUGHTER: Thank you.*

*BY THE COURT: May he step down?*

*MR. BAXLEY: No, sir. I have something more.*

*EXAMINATION BY MR. BAXLEY:*

*Q. I'm not going to go through each one of these categories, but, I notice in some of your documents there that as of now embalmers were paying the [455] occupational tax. Is that correct?*

*A. Which document are you referring to?*

*Q. One of them that shows that there are 36 of them. In this thing you filed with the Supreme Court, what number is that?*

*A. 7.*

*Q. 7? Is it true that 36 embalmers right now pay the occupational tax?*

*A. What page? The first category, the type of business which employes embalmers. Underneath that is listed an individual company which doesn't necessarily say all 36 are embalmers or any of those are embalmers. I think Johns Rideout has individuals participating in the occupational tax.*

*Q. All right. According to your exhibit #7, under categories of embalmers, everybody at Johns Rideout was paying tax.*

*A. Those 36 individuals.*

*Q. Okay. Now, that shows – as far as that shows, 100 percent of the people at Johns Rideout pay the tax?*

*[456] A. Right.*

*Q. Okay. Now, under what parts are you making these people that are embalmers pay the tax? I'm switching 180*

*degrees. Under what authority are you – is the county collecting money from them? Aren't they included in the old Title 51 where they pay a state license fee of $10?*

*A. Embalmers would be support personnel such as clerks, payroll type of administrative personnel.*

*Q. But they're listed on your Exhibit 7 as embalmers, aren't they?*

*A. That's a category that we use to distinguish between utilities as opposed to the other categories that would list other companies under.*

*Q. Well, if any embalmers are paying the tax and also are licensed, would you agree that they're not supposed to be paying it?*

*A. If they have a license under embalmers 40-12-98, and are paying the occupational tax, we would return a refund, yes.*

*Q. Would you let the county attorney advise you on whether to give back to them or not?*

*[457] A. Yes.*

*Q. Okay. I notice on that same list there that you've got at AmSouth, in the banks, 100 percent of the people there are paying the occupational tax on that exhibit, aren't they?*

*A. Yes.*

*Q. All right. Doesn't AmSouth have attorneys up there, Corporate attorneys, in-house attorneys? Mr. Slaughter asked you about Mr. Jones at the Compass Bank.*

*A. I would think so, yes.*

*Q. But in addition Mr. Jones is the CEO of Compass Bank but AmSouth has attorneys that work full time for AmSouth and in the trust department, don't they?*

*A. Yes, I would think so.*

*Q. Okay. And yet according to that figure everybody that works for AmSouth pays the tax.*

*A. 2416 employees that they reported on the annual reconciliation pay the occupational tax.*

*Q. What is the difference between what the attorneys – corporate attorneys at AmSouth do and the corporate attorneys at Liberty National?*

*[458] A. I'm not that familiar with the structure of each company.*

*MR. BAXLEY: I think that's all.*

*BY THE COURT: May he be excused?*

*MR. SLAUGHTER: Just one question.*

*EXAMINATION BY MR. SLAUGHTER:*

*Q. Mr. Godeke, is the term embalmer interpreted under your license tax to include a place of business as well as an individual embalmer?*

*A. It could be, yes.*

*So, Johns Rideout could be an embalmer and people working for it could also be embalmers?*

*A. Yes.*

*Q. If you had an employment, a company, – whether it be a real estate company or a funeral home that had worked out*

*an arrangement which wasn't a genuine legal arrangement where people who provided services on premises, like embalmers, were individual contractors, then would that individual contractor have to get an embalmers license?*

*A. He'd be required to get an individual license.*

*[459] Q. And if he as such individual contractor had had that license, would he be exempt from the occupational tax?*

*A. If the position required him to obtain the license under category 98, then he would be exempt from the occupational tax.*

*MR. SLAUGHTER: No further questions.*

*BY THE COURT: May he step down?*

*MR. SLAUGHTER: Yes.*

*BY THE COURT: Let's take a five minute recess and complete the case.*

* * *

*[551] EDWIN STRICKLAND*

*(THE WITNESS, AFTER BEING DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TOOK THE STAND AND TESTIFIED AS FOLLOWS):*

*EXAMINATION BY MR. SLAUGHTER:*

*Q. Would you state your name, please?*

*A. Edwin A. Strickland.*

*[552] Q. Mr. Strickland, what is your employment?*

*A. County attorney for Jefferson County, Alabama.*

*Q. How long have you been the county attorney for Jefferson County as a government employee?*

*A. I'm here representing the county in 1967 as an assistant county attorney. I became the county attorney in 1975.*

*Q. Are you chief legal officer for the county and does the County Commission rely upon you for legal advice in preparation of their ordinances and in their implementation of these ordinances?*

*A. It does.*

*Q. Mr. Strickland, would you identify the document that I've given you?*

*A. This is a picture of a portion of the Code of Alabama. I think this is from 1958 published version Title 62, Section 155, page 422.*

*Q. What is the purpose of this Code provision and, as a part of the same question, does it apply to Jefferson County?*

*A. It does. This is part of the compilation of local laws applicable to Jefferson County. And*

*[553] this Section 155 relates to the county attorney and provides the authority for the County Commission to have a county attorney to carry out the legal functions of the county. It also provides authority to the county attorney to serve as for – in the same function as an attorney general. As far as county matters are concerned, it allows the public officials to rely upon the opinions of the county attorney.*

*Q. To your knowledge, this law is still in full force and effect?*

*A. It is.*

*Q. And do you interpret it so as to include, among all the county officials, not only the County Commissioners but Mr. Godeke, the Revenue Commissioner to implement the county occupational tax?*

*A. It would include Mr. Godeke.*

*MR. SLAUGHTER: Your Honor, we would like to offer this document, the statute, as Exhibit #2.*

*MR. BAXLEY: No objections.*

*[554] BY THE COURT: It's admitted.*

*Q. In this handling of this case, there have been a great number of copies of Act 406 offered in evidence and I chose not to do so, so I'd like to avail myself of the earlier Plaintiffs' admitted, which I believe is #4 –*

*A. I have a copy.*

*Q. If you have a copy, then we don't need to look for it.*

*A. Okay.*

*Q. You have Act 406 before you?*

*A. I do.*

*Q. Mr. Strickland, on the basis on your long service as the county attorney, could you explain to me the purposes for which a county can levy license taxes in this state?*

*A. Well, there's basically two functions, I think. One would be to produce revenue and the other would be to provide some form of regulation in line with county's police powers.*

*Q. You are familiar with Act 406, which you have a copy of?*

*[555] A. Correct.*

*Q. You have read that and you have used it, I assume, as a basis for the occupational tax which is the issue in this case.*

*A. Correct.*

*Q. Based on your reading of Act 406, what is its purpose? Does it have the purpose of raising revenue, the purpose of regulating occupations in Jefferson County, or some combination of both?*

*A. I think its purpose is to raise revenues.*

*Q. That's purely its function in your evaluation?*

*A. It is.*

*Q. Looking at the Act and its language, does it compel Jefferson County to levy license taxes or occupational taxes or does it confer upon the county a grant of authority to do that?*

*A. Act 406 is a delegation by the Legislature of a grant to endorse the function of government to produce this revenue for its purposes.*

*Q. Were – when the County Commission decided to levy this tax in 1987, did they designate you as the craftsman of the ordinance?*

*[556] A. I was.*

*Q. So you had occasion at that time to advise them of the proper interpretations of Act 406 and the taxing authority conveyed there under?*

*A. That's correct.*

*Q. And, at that time, did you conclude that the county had some discretion as to the dimensions of the occupational tax that would be levied?*

*A. Yes. As a grant or delegation of this authority, it would be up to the County Commission to decide how much of it to use.*

*Q. And did the County Commission in 1987 adopt Ordinance 1120 for the sole purpose of raising revenues?*

*A. That's correct.*

*Q. I have two documents here. One is a certified copy of the county business license ordinance and the other is a certified copy of the occupational tax ordinance.*

*MR. SLAUGHTER: And since both of these are involved in this case, Your Honor, we would like to admit both of them into [557] evidence as Exhibits 3 for the business license code – that one right there – and Exhibit 4 for the occupational tax.*

*MR. BAXLEY: Your Honor, we have no objection but they are in evidence.*

*MR. SLAUGHTER: Well –*

*MR. BAXLEY: They're our Exhibits 7 and I think* 2.

*MR. SLAUGHTER: There is some redundency but if it can preserve the continuity of our numbering scheme, Your Honor, we numbered them before we knew what their exhibits would be.*

*BY THE COURT: All right. They're admitted.*

*Q. Now, Mr. Strickland, I'd like to ask you some questions about how the occupational tax works, in your opinion, because as I understand your previous testimony you were the principal advisor to the County Commission in creating this ordinance and you were the principal legislative draftsman of it. What kind of legal entity does – does [558] Ordinance 1120 purport to tax?*

*A. 1120 is the occupational tax. It purports to tax the employee of an employee-employer relationship who would be a actual person.*

*Q. Your answer is identified as two elements, or do I understand you correctly?*

*A. Yes.*

*Q. It taxes an actual person.*

*A. Right.*

*Q. And it taxes an actual person that is an employee-employer relationship, as I understand it.*

*A. Right. Correct.*

*Q. I would direct your attention to Section 1(b) and the language there which I will read to you. The rendering of any kind of personal services or the holding of any kind of position or job within Jefferson County, Alabama, by any clerk, laborer, tradesman, manager, official or other employee, including any non-resident of Jefferson County who is employed by any employer that's defined in this section. And then we skip the definition of employment. I don't think for the purposes of this [559] question it's necessary to read that. But that language, is*

*that intended to be all inclusive, except for the enumerated exceptions? How do you interpret that language? Is it all inclusive? Does it include governmental employees? Does it include all civilian employees? Was that your intent?*

*A. Yes. It's the intent to place the occupational tax on this class of individuals who were not previously taxed by one of the other taxing agencies which would include everybody within that class, every natural person within that class, except for one expressed exception.*

*Q. Could you tell me what the ordinance excludes according to your interpretation?*

*A. The ordinance excluded domestic servants employed in private homes and then it references the limitation of the authority granted by Act 406 so that the purpose of the tax is to tax all natural persons in an employment relationship that the County Commission was authorized by the law to tax with the exception of domestic [560] employees in private homes. And I will say a caveat to that, there's a further limitation by Act 406 as to what is done by the larger cities within the county. So, I should say that that's a further limitation.*

*Q. Do you know what the occupational tax of the largest city was at the time?*

*A. That would be Birmingham's occupational tax.*

*Q. All right. And it was what? Do you know?*

*A. Pardon?*

*Q. What was that? What was that tax or what is that tax at the present level?*

*A. Its rate?*

*Q. Yes.*

*A. It's one percent of gross compensation.*

*Q. So, levying the county occupational tax of one half of one percent was comfortably under that limitation?*

*A. It was but also keep in mind that the limitations were also extended to who was eligible to be taxed. Anyway, the domestic workers were exempted from the city occupational tax and so, therefore, we [561] wanted to take that authority to tax the most appropriate people.*

*Q. If I may direct your attention to Section 1(b) again, if I recall your earlier description of the exemptions and included domestic servants and they included the taxes described by the Code provisions which put a limitation on the county's authority in 406. But also, if I read this correctly, there's another exemption there and that is any natural person who paid a tax under the general license code of the county.*

*A. Correct.*

*Q. So that's a third exemption. Is that correct?*

*A. Well, yes, it would be, in that sense. The county, under a previous ordinance which was put into evidence as Exhibit 3, had already utilized a substantial portion of the authority provided by Act 406 in the establishment of the business license code. So, a number of businesses were already being taxed by the county. Since the adoption of the – I think this was originally set out as Ordinance #1 of Jefferson County in [562] about 1968.*

*Q. Now, you have testified that for all of the provisions of Act 406, that linked the occupational tax with the occupational tax in the City of Birmingham, you had to be mindful of*

*the taxes levied under that occupational tax. You couldn't go outside the boundaries, if you will, of the Birmingham ordinance, as I understand your testimony.*

*A. That's right.*

*Q. So, you had, for that reason among others, occasion to consult the Birmingham Occupational Tax Ordinance and its coordination with the Birmingham Business License Ordinance?*

*A. Yes.*

*MR. SLAUGHTER: Your Honor, we would like to admit into evidence those two ordinances for the City of Birmingham –*

*MR. BAXLEY: Your Honor, we would object to the relevancy. They simply are not relevant to anything that is in issue here today.*

*[563] MR. SLAUGHTER: Your Honor, it is extremely relevant. Act 406 coordinates these – they – these two taxes and, further, the city's occupational taxes have been the subject of considerable litigation by the Alabama Supreme Court or by two Alabama Supreme Court cases. One is a Court of Civil Appeals case. Until Jefferson County levied this occupational tax, there were no occupational taxes of this kind, except municipal occupational taxes. So the relevant judicial authority applies to this kind of municipal tax which served as the model for the Jefferson County Occupational Tax. And for that reason we consider these ordinances to be relevant. And the Court might take judicial notice of them but I think for the convenience of this Court, as well as the convenience of any Appellate Court, these would be useful exhibits.*

*BY THE COURT: They're admitted. Excuse me [564] just a minute. Let me take just a minute. Let's take a five minute recess.*

*(AFTER THE RECESS, THE FOLLOWING WAS HAD AND DONE):*

*BY THE COURT: Court's in session. You may continue.*

*Q. Mr. Strickland, could I direct your attention to page 127-1 of the Birmingham Occupational Tax which is Exhibit 5?*

*A. Page number again?*

*Q. 127-1. It's right at the beginning.*

*A. All right.*

*Q. At the bottom of the page you will see language "but they shall not mean or include domestic servants employed in private homes or business, etc., or for which license fees – or let me start over again. Strike that. But they shall not mean or include domestic servants employed in private homes or businesses, professions or occupations for which license fees are required to be paid under any general license code of the city. Is not the occupational tax language of the county identical to that language except you don't [565] have the statutory exemptions of Act 406?*

*A. I believe that it's identical to that point of the sentence.*

*Q. Right. The only exception other than the fact you're dealing with the City of Birmingham rather than Jefferson County, is the absence of the exemptions mandated by Act 406.*

*A. That's right and in the county ordinance, the sentence goes on to reference those other limitations of Act 406.*

*Q. All right. Turning to these exemptions that were mandated by Act 406, when you were drafting the ordinance and consulting the County Commission about the extent of your taxing authority, you had occasion to look at each and what are the Code provisions of Act 406 – I mean Code provisions that were referenced in 406 as a limitation on county taxing authority.*

*A. Yes.*

*Q. And can you tell me what categories of exemptions that you noted there?*

*A. Well, the categories would be the – well, the [566] biggest category initially would be the businesses – we don't use that term in the universal sense – that are included in the state business license code, would be the first category. And then I believe a couple of these other citations deal with the different forms of utilities that are in operation in the state and in the county, which could include telegraph companies, any forms of communication, public utilities, power, water, and then the –*

*Q. Would you characterize them as sort of big business taxes as opposed to being a professional?*

*A. It certainly would be big business in my judgment, railroads, those type of utilities.*

*Q. All right. Returning to the first category, the state business license code that you referred to, are you familiar with that in general terms, for example, does it include lawyers and accountants and professionals of that kind?*

*A. Yes.*

*Q. Did – does that state license code permit the counties to piggy back and collect the tax along [567] with the state on those particular professions?*

*A. No, I think there were a few designated professions in the base of this license code that prohibited the county from piggy backing and I believe it included attorneys and accountants.*

*Q. All right. You've explained why you excluded domestic workers. Why should you follow the example of the Birmingham Occupational Tax Ordinance and exclude tax on natural persons who already bought a county business license under the county license code?*

*A. Well, I think that was the thrust of Act 406. and it would not have been the purpose to tax two times the same individual under the business license code and then under the personal – then under the occupational tax. So, the individuals who were already in business in an individual capacity under the business license code, were excluded from the occupational tax and also there would be a question about whether they would be in an employee relationship anyway.*

*Q. What do you mean by that? In other words, someone [568] who is self employed doesn't employ himself? Is that what you're saying?*

*A. I think that's the problem. And individual who is self employed is – doesn't really consist of an employer-employee relationship. The occupational tax doesn't seem to breach that.*

*Q. So, let me see. There are two reasons then, as I understand that you've identified. One is to avoid double taxation.*

*A. Yes.*

*Q. And the other was to avoid ambiguity in the definition of employment for purposes of the implementation of the tax.*

*A. Right.*

*MR. BAXLEY: Your Honor, I'm going to have to object to leading questions.*

*BY THE COURT: Sustained.*

*Q. Did it occur to you that you might, instead of exempting the occupational taxpayers – let me strike that. Did it occur to you that instead of providing an exemption to the occupational tax for people who already pay a county license tax, [569] that you should just rewrite everything and I guess create a new tax which consisted of both the occupational tax and the business license tax?*

*A. Well, that would have involved a – what to me would have been a monumental undertaking. We had a business license code that had been in place for 20 years and was well familiar to the business community and to the county revenue department. The problem of introducing a new tax of the nature of the occupational tax, was difficult enough in itself without taking on the further problems by starting all over with the license code. So, I don't believe that it would have served the public purpose for us to have done that in conjunction with putting in the wide-reaching occupational tax at the same time.*

*Q. Excuse me a moment. I need to retrieve an exhibit. Do you have any of the Defendants' exhibits that are all here? This report that we discussed yesterday about the identification*

*of the proprietorships who paid the license taxes and [570] Mr. Godeke discussed that.*

*BY THE COURT: Why don't we move to another area while we're looking for the –*

*MR. SLAUGHTER: No, I know there are other areas but it breaks the logic of my series of questions and I'm – if they can stipulate to the fact that this is Exhibit 9, when we find it.*

*MR. BAXLEY: If you say so, we'll stipulate it.*

*MR. SLAUGHTER: Okay. I will provide Mr. Strickland with my copy and try to deal with it from there.*

*Q. Mr. Strickland, have you seen that report?*

*A. I think I have. I haven't studied this report.*

*Q. Prepared by Mr. Godeke which identifies the people – the number of license of individual proprietors who pay either the state tax – license tax which you collect or the people who pay pursuant to the county license code.*

*A. I believe that's the characterization made by a subordinate of Mr. Godeke on the first page.*

*[571] Q. Have you discussed this report with Mr. Godeke?*

*A. Not particularly but I'm generally familiar with it, I think.*

*Q. Do you understand the logic of it?*

*A. Well, you can try me.*

*Q. Okay. Here is Exhibit 9, it seems to have lost the label.*

*A. This would be businesses in his departments that were issued a county license under the county license code as sole proprietors.*

*Q. The second part of it deals with the county license code beginning on page 4. The first part begins with the state license code being on page 1.*

*A. Okay. That's not written on here.*

*Q. You're correct. It is not. The way you would determine that is by actually looking at the license section numbers and comparing them with the state code and you would compare, beginning on page 4, the various sections of the county license code with the line item entries. And by doing that you can establish the correspondence.*

*[572] A. All right.*

*Q. Now, while you're referencing that, I want to see if we can establish an understanding of who is exempt under this occupational tax ordinance. Domestic workers, are they exempt?*

*A. Yes.*

*Q. Okay. People – are people who pay an individual license tax to the state exempt?*

*A. If they're within the business license code of the state.*

*Q. I specified any of those section reference in 406?*

*A. Right.*

*Q. But if they're not specified in those statutory references in 406 and they pay to the state, they are not exempt?*

*A. Correct.*

*Q. Are people who are individual proprietors who pay a county license pursuant to the county historic 20-year or more old business license, are those people exempt?*

*[573] A. Yes.*

*Q. Okay. Can you think of anyone else who is exempt?*

*A. (no response)*

*Q. Who is an actual person.*

*A. I can't think of anyone at the moment.*

*Q. All right. To clarify this, what if I am a professional and I practice as a professional corporation, and my professional corporation pays a county business license, and I'm the sole owner of that corporation.*

*A. Well, the sole proprietor – that's the category you're talking about earlier –*

*Q. No, as a legal entity. Does sole proprietorship apply only to natural persons?*

*A. Yes.*

*Q. Okay. Now I am a professional corporation and I pay a county business license tax.*

*A. Yes.*

*Q. And I own the corporation solely. And I pay myself a salary. Do I have to pay an occupational tax on that salary if I am not an otherwise state-exempted profession?*

[574] A. Yes, you would.

Q. So for – to understand that, a natural person who is exempt under the county business license code, but who elects to do business – let me strike that. It gets rather complicated. Let us say that I am a natural person who works as a geologist for a real estate appraisers. Let's take two types of professionals who testified yesterday. And at the time they testified, as I recall, they were not subject to a state license tax that was specified in Act 406. They – in one case, the real estate appraiser practiced as a corporation. They conducted their business as a corporation. The corporation paid a county business license tax. Under that situation, would the owner – the 100 percent owner – of that corporation who pays himself a salary also have to pay the occupational tax.

A. He would on his salary.

Q. But if he had chosen to avoid practicing his business as a corporation and had just obtained the business license directly as an individual, [575] he would not have to pay the occupational tax on that earnings, correct?

A. Correct.

Q. Thank you.

A. That's to avoid the double tax.

Q. All right. Changing the subject, and going to a couple of – I'm going to give you this for ease of reference of the state license code. First of all, let's consider the profession of ministers. Is it your interpretation that the county occupational tax applies to ministers?

A. Yes.

*Q. He collects his salary from the church.*

*A. Right. Yes, they're included in the occupational tax.*

*Q. Do you know whether or not they're also included in the Birmingham Occupational Tax?*

*MR. BAXLEY: Your Honor, we object. It's immaterial. What Birmingham does or doesn't do is immaterial.*

*BY THE COURT: Sustained.*

*Q. Why did you include ministers in the occupational [576] tax? Or not exclude them.*

*A. Well, I think it would be the intent of the County Commission to exercise the full authority provided by 406 and, at the time that we were drafting and proposing this local taxing authority, we were trying to sweep as broadly as we could.*

*Q. Did you follow the example that you were consulting that ordinance or the Birmingham Occupational Tax?*

*A. Well, certainly we didn't want to reinvent the wheel and Birmingham was tied in – we were tied in to Birmingham by Act 406. We had to consult the code in order not to exceed the limitations that Act 406 imposed on us by connecting us with the Birmingham License Code. So we had to reconstruct that code and to then include whatever we had the authority to include and ministers were not excluded by the Birmingham License Code but, as far as I know, they were subject to tax.*

*Q. Do you think it is Constitutional to include ministers in the occupational tax?*

*A. My personal opinion?*

*Q. The opinion that you – the legal opinion that [577] you incorporated into the creation of Ordinance 1120.*

*A. I did.*

*Q. Have you enforced the occupational tax against any ministers since it's gone into effect?*

*A. That's more a function of the revenue department but it is my understanding that the ministers paid the occupational tax for seven years and there are many ministers who are still paying the occupational tax.*

*Q. Okay. Are there some who have demurred and refused to pay?*

*A. That's correct.*

*Q. And has the county instituted enforcement proceedings against them?*

*A. Your Honor, we looked at this pretty hard and it's a rather unique legal situation. My memory is that there are several United States Supreme Court cases that bear on this point and a number of other state lesser Court cases that bear on point. In fact, we studied this matter several years ago. We pretty much came to the conclusion [578] that we didn't want to undertake to force the issue on ministers at that time. The law was or seemed to be merging and evolving and it's just a battle that we didn't need to undertake at that time.*

*Q. Could your reasons sort of be classified then as tax administration reasons? You just –*

*MR. BAXLEY: Object to leading.*

*BY THE COURT: Sustained.*

*Q. Would you have – in your opinion, based on the complicated legal uncertainty that you've just described, would this kind of litigation be expensive –*

*MR. BAXLEY: Object to leading.*

*BY THE COURT: It is leading, sustained.*

*Q. Well, can you think of any reason why you wouldn't pursue enforcing the occupational tax against ministers?*

*A. Several reasons. Any lawyer is going – when he has the opportunity is going to be mindful of the battles that he chooses to undertake when he has something of the magnitude of this [579] task. We – well, the situation with the federal judges is an example. We decided to pursue that because we thought we could win and it just astonished me that that particular matter has gone all the way to the United States Supreme Court. I thought it was pretty straight forward and clear. So you just don't know. The ministers involve a much grayer area than did federal judges. Ministers involve implementation of the First Amendment of the United States Contitution which is always evolving and pretty much my decision I suppose not to pursue that at this time. We haven't ruled it out.*

*Q. Have you done any calculations about the expense-reward ratio in pursuing such litigation? How much money you would collect in relation to the expense.*

*A. I have not but just from the general practicalities of it, it would be a very small amount relative to the tax itself.*

*Q. You referred to your enforcement efforts against federal judges. Are you familiar, then, are you [580] handling the suit against federal judges?*

*A. I was involved in the initiation of it and had taken a lesser role in the latter but I'm familiar with it generally.*

*Q. Could you describe that enforcement effort?*

*A. Well, we've used several judges pretty much the same as we did any other federal employee and some of the biggest problems we had in the early implementation was convincing federal employees that they were subject to the tax. I think a lot of federal employees sort of were guided by this faction that was going on with the federal judges. So we had to fish or cut bait. We were very – felt very confident about our cases on the federal judges and so we pursued collection for those that were refusing to pay. Incidentally there were several of them that were paying it. In my memory there were only two that refused to pay it. In the beginning all of them were paying the city occupational tax. So, that's the kind of rationale that was included in our decision to pursue the federal judges.*

*[581] Q. Turning to federal employees generally, is the occupation tax – does it apply equally to federal judges and state judges who practice, sit on the bench, in Jefferson County?*

*A. It does.*

*Q. With regards to other kinds of governmental employees, does it apply equally? For example, would it apply equally to an employee of the State Department of Human Resources and an employee of the Social Security Administration of the federal government or the department of health and human resources?*

*A. It does. I don't recall any reason in particular who the employer is, whether it's the federal government or the state government or county government or the city government.*

*That wasn't really the issue. The issue is what is an employee-employer relationship and whether it's a natural person. That's pretty much the criteria.*

*Q. What has happened to the case that you brought to enforce the tax against federal judges? You mentioned it was appealled to the United States [582] Supreme Court. What did the United States Supreme Court do with the case?*

*MR. BAXLEY: We object. It's immaterial and irrelevant.*

*BY THE COURT: Overruled.*

*A. My memory is that the Court took the case and then directed the attorney for the United States of America to take a position on the matter and he filed a brief which supported the county's position on the occupational tax against federal judges. And following that the U.S. Supreme Court referred the matter back to the attorneys for – I mean back to the 11th Circuit Court of Appeals and then back to the attorneys for briefing on that point further. And that's where it is now. It's back at the 11th Circuit Court of Appeals.*

*MR. SLAUGHTER: Your Honor, we would like to admit into evidence a copy of the opinion – of the brief rather filed by the Solicitor General of the United States on behalf of the United States Government at the direction of the Supreme Court of [583] the United States setting forth their analysis of this tax under the Buck Act and the Public Salary Tax Act. There are really two statutes that are involved there and they kind of – one named the Buck Act – but it's for USC-111 is not really part of the Buck Act. The two federal taxes are in issue in this case as a basis for the sub-class claiming that they are exempt as federal employees. And we think it's highly relevant*

*that the highest agency to express an opinion on this legal question for the United States Government has expressed its opinion to the United States Supreme Court that no federal employee is exempt from the occupational tax under this Buck Act or the other salary taxes.*

*MR. BAXLEY: Your Honor, we would object on three grounds, irrelevant, immaterial – one and two – and number three, the judges who tracked this thing, did [584] it on a totally separate theory that is not any way, shape or form of fashion related to what we have here. It's just so immaterial. And in addition even though immaterial I might could see letting the opinion of the Supreme Court come in for sort of guidance even though on an immaterial point. But to offer the brief of the brief by any party or any side is just ludicrous as far as stretching the materiality.*

*MR. SLAUGHTER: Your Honor, this is not a brief this is a brief filed at the request of the United States Supreme Court for direction by the Department of Justice. It was a brief filed pursuant to an order that was entered by the Court and is part of the public records of the proceedings in the United States Supreme Court. Normally these briefs are not filed under those circumstances. Moreover, his [585] characterization of the issues in the judges' case is not correct. One of the issues was that the government had not consented to the taxation of federal judges in this his manner and under this kind of an occupational tax act. And the analysis in this brief examines the nature of the ocupation tax in the context for you at C-111.*

*MR. BAXLEY: Your Honor, in addition to those grounds as cited, if he really stressed it and the Court were to believe, he might could call whoever he wants to and let them*

*get up here and qualify as an expert and over our strengh of objection as to relevancy, testify about their opinion,. But in addition to all the other grounds this is blank hearsay. We're not purported rights to cross examine the person. If the person were under sworn affidavit, there's no exception to the hearsay rule It allows an opinon like this to come in [586] without being cross examined in estimate. And so there are numerous reasons why this is improperly offered.*

*BY THE COURT: Well, it's not admissible for the purposes of trial. If you – at the conclusion of the trial I'm going to ask you for a brief anyway, if you want to incorporate the cases in it that's part of your argument, then that might be proper, but right now it's admitted. Objection is sustained.*

*MR. SLAUGHTER: Your Honor, if I might just say one thing. Under Section 201 I think it would be a subject such as this case. Would you take judicial knowledge? It is my distateful determination by resort to sources if this accuracy cannot reasonably be questioned. It was filed with the Supreme Court. We think, as opposed to just a general objection, we think it comes under Rule 201 –*

*BY THE COURT: Let me – I don't mean it [587] comes into evidence though I think it may be admissible for purposes of argument just like what you stand up is an argument. You can't very well take a brief and have it admitted into evidence.*

*MR. SLAUGHTER: Right. The only point I'm making though, Judge, is that you can take judicial knowledge of the position taken by the U.S. Government in the earlier case. That is the subject of using this table.*

*BY THE COURT: I could if it were relevant to any of the issues but –*

*MR. DAUPHIN: It is relevant in that if this was disposed of by the Supreme Court. They've spoken plainly on that. They've painted the judges of the 11th circuit with respect to Buck Act and 4 USB-111 issues and remanded the case –*

*BY THE COURT: But not anyone except those two federal judges.*

*[588] MR. DAUPHIN: No, in general for federal employees because they're not treating federal judges and different from other federal employees. And they remanded the case – they vacated completely the judgment of the 11th Circuit and remanded the case, on one issue only, and that is whether the Federal Court even had jurisdiction of the case under the Tax Injunction Act. So they have, in the federal judges' case, disposed of the so-called Buck Act.*

*BY THE COURT: Yes, go ahead and hold your argument and I'll look at it, but I don't think it's proper at this time.*

*Q. All right. Mr. Strickland, I've given you a copy there of the state license code. It's in a book which both parties have been using for purposes of convenient reference to that Code during this trial. If you could turn to page 817, which is where that begins, and then turn over a couple of pages to Section 40-1249 [589] Attorneys. On the basis of schedules already admitted into evidence, the Plaintiffs' have questioned the fact that certain banks seem to pay occupational taxes on 100 percent of their employees and other banks do not pay occupational tax on 100 percent of their employees.*

*MR. DAUPHIN: That's improper.*

*MR. SLAUGHTER: I was attempting to establish a –*

*BY THE COURT: Is that an objection?*

*MR. BAXLEY: What he's objecting is in pursuing facts not in evidence because what he – it's not admissible, not properly phrased – it's also erroneous by saying we have questions that some banks paid 100 percent and other banks pay less than 100 percent, when all banks pay 100 percent. Well, what we questioned was if banks pay on 100 percent, insurance companies should pay no less than 100. They both have general counsels.*

*[590] BY THE COURT: Do you have an opinion?*

*MR. DAUPHIN: I will accept his characterization of the evidence.*

*BY THE COURT: All right. Will you rephrase the question?*

*Q. Can you think of any reason why a bank that employs attorneys would be paying the occupational tax or deducting the occupational tax on such attorneys and the attorneys would accept the payment of the occupational tax coming out of their paychecks?*

*MR. BAXLEY: Objecting to his thinking of any reasons. Yes, it's an improper –*

*BY THE COURT: Yes, sustained.*

*Q. Are there any reasons why that situation might exist?*

*A. There are.*

*Q. What would they be?*

*A. Well, we've had situations arise where what we call in-house attorneys for large corporations in this community where the individuals would be performing different functions. One individual might be going to Court. One individual might [591] never go to Court. Another individual might be limited in the particular type of activity that he performed, albeit legal, in house. We had to examine these – many of them – on a case-by-case basis. The result was pretty much that we consulted with the State Bar Association and if the State Bar Association required that particular individual to have a state attorney's license, I don't believe we went behind that.*

*Q. You say required.*

*A. Yes. In order to carry out the function that he was performing.*

*Q. What if a lawyer just wanted to buy the license and stay registered as a lawyer?*

*A. Well, we had, in the beginning, I think we had many individuals in this community who had lawyering and did not practice law. They were not engaged in the practice of law who attempted to buy a business license or by active attorney's licenses in order to escape the occupational tax. And I think that we successfully dealt with that and rejected those claims in a number of cases.*

*[592] Q. Can you read the first sentence of Section 40-1249 –*

*MR. BAXLEY: Object. The best evidence is already in evidence and has been read too many times.*

*BY THE COURT: Overruled. Go ahead.*

*A. Each attorney engaged in the practice of law shall pay an annual license tax for the state but none for the county.*

*Q. So this tax is imposed on attorneys who practice law.*

*A. Correct.*

*Q. Did you derive your definition of the practice of law and conception of the practice of law for the purpose of this implication from the confrontation with the State Bar?*

*A. In conjunction with them, certainly.*

*Q. And could you characterize what constitutes the practice rather than just being a lawyer who doesn't practice as an employee of a company?*

*A. I think that term was defined in the state attorney license law and it covers – I think [593] there's examples in there – it certainly includes the individual who goes to Court. It includes individuals who hold themselves out to be a practicing attorney. It would include individuals who render legal advice as an attorney, saying I am an attorney rendering legal advice. I think there are a few exclusions like attorneys who are doing something on their own, for their own behalf, or something which they have a substantial personal equity in.*

*Q. You said the state license law. Do you mean 40-1249 or do you mean –*

*A. I mean other state law dealing with attorneys.*

*Q. All right. Can you turn to page 831? I'll direct your attention to Section 40-1271, Certified Public Accountants. Does the occupation tax, according to your interpretation, apply to a certified public accountant who works for a corporation and who has no other clients or a governmental agency or any or entity?*

*A. On his salary from that employer-employee relationship, than yes.*

*[594] Q. What must a certified public accountant do in order to be exempt from the occupation tax?*

*A. A portion of his compensation is directly a product of his having been engaged in the practice of public accounting, would be exempt from the occupational tax.*

*Q. Now, do you have Exhibit – the exhibit before you, the pink folder there, which deals with the county business license tax? Could you turn to page 18 and I direct your attention to Section 89, Real Estate Salesmen.*

*A. Yes.*

*Q. Could you read that section?*

*A. 89, Real Estate Salesmen, each person employed as as real estate salesman licensed under the provisions of Title 34-2730 shall pay an annual license amount of $25.*

*Q. Suppose I am a sales representative of a real estate company and I ply my trade but I have a relationship with him that, for general legal purposes, the federal income tax law, state income tax law, etcetera, is not that of the [595] employee-employer relationship, but that of an independent contractor? I handle my own benefits. Would I pay the county occupation tax on my earnings as such independent contractor?*

*A. No.*

*Q. Let's reverse things. Let us say, in the hypothetical, that I am an employee for federal income tax purposes, but I'm still working on commission but I get some compensation*

*that's not commission that is not commission-based. I have some benefits for purposes of, say, social security deductions, I would be an employee. In that case do I pay an occupational tax on my wages?*

*A. Yes.*

*Q. How do you interpret this phrase "each person employed as a real estate salesman"? Does that describe an employee or does it describe an independent contractor?*

*A. It's an independent contractor.*

*Q. Why is that?*

*A. Well, this is the business license code and it [596] covers the individuals who, in the case you outlined in your question, are what we would call indepdendent contractors or proprietors. They are individuals who are not in the true employer-employee relationship.*

*Q. But the wording here says employed.*

*A. Well that word doesn't mean – it's not intended to mean as an employee. It means like carrying out the functions. Well, the gentleman who's employed as a court reporter right now, he's performing a function It doesn't mean he's an employee in the traditional sense of employer-employee.*

*Q. That explanation appears to stress the word "as" and am I understanding you correctly?*

*MR. BAXLEY: We object. How in the world can he answer whether Mr. Slaughter understands him correctly or not.*

*Q. Let's try again. I understand your example of the court reporter. How do you as a interpretor of legal language*

*read into this language that a person employed as a real estate salesman, as [597] an independent contractor but working under the name of a real estate company, is not an employee?*

*A. Well, to determine if someone is an employee, you would apply the traditional elements of an employment relationship.*

*Q. Well, what is it in this language that entitles you to say if he satisfies the incidents of an independent contractor, that he's not employed by the real estate company?*

*A. I'm saying he's performing as a real estate salesman. It's tantamount to saying engaged as a real estate salesman.*

*Q. All right.*

*MR. SLAUGHTER: No further questions.*

*BY THE COURT: Mr. Baxley, any questions?*

*MR. BAXLEY: Yes, sir, Your Honor.*

*EXAMINATION BY MR. BAXLEY:*

*Q. Andy, are you telling the Court that a lawyer who is employed as a general counsel for a large corporation, that devotes his or her full time to commenting on legal matters and their effects for their captive client, but never goes [598] to Court and never signs a pleading, are you telling this Court that those lawyers are not engaged in the practice of law?*

*A. No. I'm saying that we have to examine those situations on a case-by-case basis as they are presented to us. We would look at the facts. We would look at exactly what the individual is doing, what his responsibilities are, and we would also look at what his – what is his situation with the State Bar itself.*

*Q. All right, now –*

*A. We would be persuaded by the conditions of the State Bar as to whether or not he was engaged in the practice of law.*

*– Q. Are you acknowledging or admitting that you have some in-house counsel that pay the occupational tax and some that don't pay it?*

*A. That's my understanding, yes.*

*Q. And yet these in-house counsel have the same exact identical law license with the State Bar, don't they?*

*A. Well, I can't generalize. That calls for a general [599] statement and I can't generalize. I think that there are – it's been several years since we – since I've been involved in a problem with this – but in the beginning we had some attorneys who had been performing in the corporation situation as an in-house lawyer who were not members of the State Bar and who – whatever they were doing – and then when the occupational tax was passed, they went down and purchased a State Bar license. The State Bar was happy to sell them a license, of course, if they were qualified and eligible. And the State Bar was not looking at the relationship in the same way that we were. So there was an educational process and a dialogue that went on between us and the State Bar about this problem. We were both searching for the right answer in each case. And I think the bottom line is that in – and I don't know what the numbers are, Mr. Baxley – the bottom line is that there are probably still today in in-house situations are people who are attorneys who are not members of the State Bar and there [600] are people who are attorneys who are members of the State Bar. And the ones who are we probably have gotten to the point*

*where we accept the State Bar's characterization of their having required to buy that license to carry on the function of their performance.*

*Q. I don't want to cut you off, Andy, but I think my question was simple. Don't the in-house lawyers that do pay the occupational tax have the same license that the in-house lawyers that don't pay it have?*

*A. I don't think I can give you a general answer to that! There may be in-house lawyers that don't have the license.*

*Q. Okay.*

*A. That's what I'm saying.*

*Q. Assume that they have a license to practice law in the state – the same license that you and I have. It's identical to what a – strike that. I'll ask you – I'll put it this way. Are you acknowledging that an in-house attorney that has a license pays the tax and other in-house attorneys [601] that have the same license, don't they?*

*A. There may be situations like that.*

*Q. And –*

*A. Excuse me. Let me amplify that. There may be individuals whose compensation is related to different functions. For instance – hypothetically, I don't know – hypothetically there may be employees in corporations that have a very multiple roles or some business that might be apart from legal activity and part might be From other activities. The other activity would be taxed.*

*Q. Do you have in-house legal attorneys that do nothing but legal work that have a state law license that pay the tax and other in-house attorneys who do nothing but legal work that have a state license that don't pay it?*

*A. I don't know that. I don't the facts of the cases you're talking about.*

*Q. What do you know of that the in-house attorneys trust department of the big banks do that does not include legal work?*

*[602] A. Well, at the outset, we don't make the initial determination. At the outset, it's the employer who makes the determination as to whether he will deduct front that particular employee's wages the occupational tax. So, if the employer does so, and pays the occupational tax to the county and the employee lawyer doesn't come in and challenge that, we don't know it. We don't have a case on that. We don't have any knowledge of the facts on that.*

*Q. Let me ask you this. In your situation, you are the county attorney.*

*A. Right.*

*Q. Are you employed by the county?*

*A. Yes, sir.*

*Q. Are you under civil service protection?*

*A. No.*

*Q. Are you allowed to have outside clients?*

*A. I have. There's no prohibition against it. I just don't have time.*

*Q. Okay. But your not prohibited from having outside clients?*

*[603] A. Right.*

*Q. But you don't have any now?*

*A. No.*

*Q. When was the last time year-wise that you did any work that was not related to your employer's account?*

*A. Well, I've done work, I just haven't charged.*

*Q. That you charged for.*

*A. I'd say several years. I don't know.*

*Q. Well, before 1987?*

*A. In one or two situations since '87.*

*Q. Where you charged a fee for representing somebody?*

*A. Yes.*

*Q. Okay. Have you – are you covered by your title through Jefferson County?*

*A. Yes.*

*Q. Does Jefferson County pay your social security taxes, their share of it?*

*A. Yes.*

*Q. Are you covered by unemployment and other benefits with Jefferson County?*

*A. Yes.*

*[604] Q. Do you have a regular law license to practice with the State of Alabama State Bar Association?*

*A. Yes.*

*Q. And you've been – through that law license, you can walk into Court in Mobile and try as many criminal or civil cases you choose, right?*

*A. Yes.*

*Q. And you could do the same in Huntsville at the other end of the state.*

*A. Right.*

*Q. Even though you're employed by the county?*

*A. Right.*

*Q. Okay. And are you paying the occupational tax?*

*A. Not to the county.*

*Q. You're not paying the county occupational tax?*

*A. No.*

*Q. Okay. That's because you have this law license with the state Bar Association?*

*A. That's because the occupational tax doesn't apply. There's no part to tax the attorney unless he practices law.*

*Q. Okay. Do you personally pay the license fee with [605] the State Bar or does the county pay it for you?*

*A. I paid it for many years and I believe right now the county is paying for it.*

*Q. Okay. Goes the county send it in for you?*

*A. I think so.*

*Q. How many employees are there – attorneys – in Jefferson County?*

*A. There are three total.*

*Q. Now, when Mr. Slaughter, was asking you about the Birmingham Occupational Tax, and he mentioned – either he or you or both of you mentioned "tied in with Birmingham by Act 406". You're not telling this Court that the City of Birmingham, on their occupational tax, exempts all these professions that the county exempts, are you?*

*A. No.*

*Q. And when Mr. Slaughter asked you about our Exhibit 7, he showed you the county license code –*

*A. Business code?*

*Q. Business code, on page 18, Section 89, where it reads "real estate salesmen – each person employed as a real estate salesman licensed under the [606] provision of Title 34-27-30, shall pay an annual license amount of $25". That's all it says, right?*

*A. Right.*

*Q. And so you're saying that employed doesn't mean employed?*

*A. I'm saying that if this reaches those real estate salesmen who perform as what I would call independent contractors. They're not employees.*

*Q. Okay.*

*A. Of an employer.*

*Q. All right. Well, in the very next section, Section 90 – Insurance Agents. Tell the Court, please, how a fire and marine*

*insurance agent is different from a life or health or casualty – well, life or health insurance agent?*

*A. I'm not really capable of explaining that. I can say that the Code of Alabama and the Legislature through the Code chose to distinguish between fire and marine and others. Why they did that I don't know. But they tax a separate tax provision and separate statutes that apply to insurance situations [607] as to whether they're fire and marine and not fire and marine.*

*Q. Andy, I'm going to show you what's marked Plaintiffs' Exhibit 6 and Plaintiffs' Exhibit 7. Plaintiffs' Exhibit 6 was the first license code for Jefferson County dated September 29, 1987. Is that right?*

*A. That's correct.*

*Q. Okay. Plaintiffs' Exhibit 7 is the license code the superceded 6 and was adopted September 12, '89, wasn't it?*

*A. Right.*

*Q. Okay. Now, in Plaintiffs' Exhibit 6, the first license code, fire and marine agents were not treated from life or health agents, were they?*

*A. There's no category in Plaintiffs' Exhibit 6 for insurance agents as it's set out here.*

*Q. Okay. So that was added in between September of '87 and September of '89.*

*A. I believe so.*

*Q. All right. Now you just told the Court something about the state law treating fire and marine agents [608]*

*different. What – don't you know the state law relative to insurance agents didn't change between those years?*

*A. I don't know that. All right. What knowledge do you have as the county attorney? You're the county attorney – you would be the county – the main county attorney in 1989 and 1987, weren't you?*

*A. Correct.*

*Q. What knowledge do you have about how this exemption came into being about the fire and marine agents in '89 that wasn't there in '87?*

*A. I'm having a problem because I cannot answer your question exactly. My – it's conceivable and possible, but I don't know that these agents were paying under the provision of 5(a) which is the catch-all provision – agents, dealers and other businesses – and that they were then, well, at least, this was broken out as a separate category. But I can't – I haven't been able to find anything that would tell me for certain that's what happened. So fire and marine insurance agents pay 1/40 of [609] one percent of their comalissiors.*

*A. Under Category 90.*

*Q. And life insurance and health insurance agents pay one-half of one percent occupational tax on their commissions.*

*A. Those that are employed in employer-employee relationships.*

*Q. Okay. Then let me re-ask that. The fire and marine agents that are employed in employer-employee relationships, they pay what?*

*A. Say again now.*

*Q. The fire and marine life insurance agents that are in employed in an employee relationship, they pay what?*

*A. You say fire and marine life insurance –*

*Q. I'm sorry. Fire and marine insurance agents.*

*A. Okay. Agents for fire and marine who are not in an employer-employee relationship, would be paying under 90. Now those other insurance agents that are not employed in an employer-employee relationship, I believe would be paying under 5(a).*

*[610] Q. Are you telling the court that under 90 it has to be at employee relationship?*

*A. (no response)*

*Q. Read that –*

*A. No, not under 90.*

*Q. All right. It says insurance agents, does it not?*

*A. Yes.*

*Q. On each person, firm or corporation engaged in the business of acting as agents for fire and marine insurance companies Shall pay a license of 1/40 of one percent of the gross commission from said business from the previous year.*

*A. Right.*

*Q. With a minimum license of $7.50.*

*A. Right.*

*Q. Now, where in there does it say it has to be as an employee?*

*A. That's not what I said. I said he would not be in an employee relationship.*

*Q. Okay. If an agent for, a fire or marine insurance company was in an employee relationship, what would he pay?*

*[611] A. If he's a true employee, and he's not otherwise paying under the state business license code, he would pay his occupational tax.*

*Q. You said he would pay – you said if he was an employee, he would pay the occupational tax?*

*A. Yes.*

*Q. Even though it says under Insurance Agents each person, firm or corporation engaged in the business of acting as agents?*

*A. That's a business. That's the sole proprietor we were talking about. That's the independent contractor, sole proprietor, who is – who has a business.*

*Q. So is it your testimony that individual agents that are employees do not pay – for fire and marine insurance companies – do not pay ¼ of one percent? They pay the .5 percent?*

*A. If you'll repeat the question. "It's mixed up.*

*Q. All right. Let's start from square one and then I'll stop. Do you know if fire and marine agents pay –*

*A. Do I know what?*

*[612] Q. Do you know what the fire and marine agents in Jefferson County pay?*

*A. I can only tell you what this document says.*

*Q. Well, the document –*

*A. I wouldn't know one if he walked in the door.*

*Q. Okay. The document's in evidence, so Section 90 says what fire and marine agents pay.*

*A. If they are a business as an agent. This is a business license code. If he is – if he is as an agent he is in the business of acting as an agent, and he is not in an employer-employee relationship to someone else, he can buy this license.*

*Q. Okay. What if he is an employee of someone else? Can the fire and marine agent buy that license?*

*A. No.*

*Q. He cannot.*

*A. No. Not for the duties he performs as an employee.*

*Q. Okay. What if he is an employee of someone else but he's on commission?*

*A. Well, the commission is just a form of compensation. That doesn't change anything.*

*[613] Q. I agree with that but what would he pay the county?*

*A. Say it again.*

*Q. If a fire and marine or marine agent is an employee of a company engaged in the business of writing fire and marine insurance –*

*A. As an employee?*

*Q. As an employee, but he is paid on commission, what would that agent pay the county?*

*A. I would assume – I have to assume on your statement of facts – that he's not otherwise covered under something else under state law.*

*Q. Okay.*

*A. But if there's a person such as you just described, he should be paying the occupational tax.*

*Q. Okay.*

*A. Now, the reason I'm hesitating here is because there are some state laws applicable to fire and marine that you just have to get into and read and try to understand why they make a distinction between fire and marine and other types and there's [614] provisions in there that may – and I hadn't read this in a while – but may indicate that you can perform – for fire and marine you have to do it a certain way. In other words, it's not an ordinary insurance situation and I don't know why.*

*Q. Okay. I think that's the best answer. You don't know why and we are through.*

*BY THE COURT: May he step down?*

*MR. SLAUGHTER: Yes, sir. No further questions.*

*BY THE COURT: You may step down.*

*MR. SLAUGHTER: The Plaintiffs rest.*

*MR. BAXLEY: Well, Your Honor, we will not put up any rebuttal and we'll not recall the witness and we'll not offer any more exhibits except that we would like to say in light of what they've done ask the Court on the pending thing that the Court has about our offer of study. I think it's #1 and we think that it's certainly admissible now. Bear in mind it's a document generated by the county*

* * *

**JEFFERSON COUNTY COMMISSION**
[LOGO]

[Names Omitted In Printing]

MEMORANDUM

**DEFENDANT'S EXHIBIT NO. 9**

TO: Randy Godeke, Director
Department of Revenue

FROM: Tom Meacham, Sr. Auditor TAM
Department of Revenue

SUBJECT: Statistical Report – Proprietorships

DATE: October 20, 1997

Attached is a statistical report summarizing all sole proprietors purchasing a state or county license for the period of October 1, 1996, through September 30, 1997. This report shows a total of 17,301 licenses issued with the county receiving $292,081 in revenue for the Non-Regulated Professional Licenses. If you include the Regulated Professionals, you would add 7,465 additional licenses and $72,948 additional in revenue.

For the period October 1, 1996, through September 30, 1997, the Department of Revenue issued a grand total of 20,510 State Privilege Licenses, of which the county received $737,950, and 16,223 County Business Licenses in the amount of $2,901,288.

As you will notice, the report does not include the category of attorney. The attorneys remit their annual license

fee directly to the State Bar Association and are not required to purchase a license through the Revenue office.

If you need additional information, please let me know.

WP

Attachment

OTCOURT2.XLS

96-97 Business Licenses issued to Sole Proprietors

| Licence Section | License Description | Number Issued | State Amount | County Amount | Total License | **Average Hourly Wage | Total Annual Wage | Total Wages Per Lic Issued | Annual OT |
|---|---|---|---|---|---|---|---|---|---|
| 8 | Single Store License | 2724 | 2593 | 0 | 2593 | 12.74 | 26499.20 | 72183821 | 360919 |
| 41 | Abstract Title | 1 | 45 | 15 | 60 | 15.57 | 32385.60 | 32386 | 162 |
| *43 | Accountant, Auditor | 481 | 11675 | 0 | 11675 | 18.52 | 38521.60 | 18528890 | 92644 |
| 44 | Business Machines | 47 | 4250 | 2125 | 6375 | 15.57 | 32385.60 | 1522123 | 7611 |
| 45 | Advertising | 13 | 1875 | 938 | 2813 | 22.35 | 46488.00 | 604344 | 3022 |
| 46 | Air Conditioning | 19 | 1850 | 925 | 2775 | 11.72 | 24377.60 | 463174 | 2316 |
| 46A | Air Conditioning | 2 | 15 | 8 | 23 | 11.72 | 24377.60 | 48755 | 244 |
| 46B | Air Conditioning | 8 | 73 | 36 | 109 | 11.72 | 24377.60 | 195021 | 975 |
| *48 | Architect | 164 | 4088 | 0 | 4088 | 21.02 | 43721.60 | 7170342 | 35852 |
| *50 | Auctioneer | 31 | 775 | 0 | 775 | 16.57 | 34465.60 | 1068434 | 5342 |
| 51 | Auto Dealer | 470 | 34083 | 17041 | 51124 | 15.35 | 31928.00 | 15006160 | 75031 |
| 53 | Auto Accessories | 196 | 4187 | 2094 | 6281 | 13.17 | 27393.60 | 5369146 | 26846 |
| 54 | Car Repair | 472 | 3230 | 1615 | 4845 | 9.28 | 19302.40 | 9110733 | 45554 |
| 55 | Car Storage | 3 | 10 | 5 | 15 | 12.74 | 26499.20 | 79498 | 397 |
| 56 | Car Storage | 13 | 185 | 92 | 277 | 12.74 | 26499.20 | 344490 | 1722 |
| 58 | Barber | 209 | 1165 | 583 | 1748 | 5.78 | 12022.40 | 2512682 | 12563 |
| 60A | Battery | 1 | 15 | 7 | 22 | 13.17 | 27393.60 | 27394 | 137 |
| 61 | Beautician | 647 | 7669 | 3835 | 11504 | 5.78 | 12022.40 | 7778493 | 38892 |
| 62 | Bicycles/Motorcycles | 10 | 105 | 53 | 158 | 15.57 | 32385.60 | 323856 | 1619 |
| 64 | Bond Maker | 5 | 450 | 225 | 675 | 20.06 | 41724.80 | 208624 | 1043 |
| 69A | Carbonated Drinks | 663 | 1601 | 801 | 2402 | 6.82 | 14185.60 | 9405053 | 47025 |
| 69B | Soda Fountain | 290 | 5663 | 2831 | 8494 | 6.82 | 14185.60 | 4113824 | 20569 |
| 70 | Soft Drinks/Wholesl | 1 | 50 | 25 | 75 | 6.82 | 14185.60 | 14186 | 71 |
| *71 | Certified Pub Acct | 689 | 17088 | 0 | 17088 | 40.14 | 83491.20 | 57525437 | 287627 |
| 72 | Cigarette, Retail | 361 | 3661 | 1830 | 5491 | 8.57 | 17825.60 | 6435042 | 32175 |
| 73 | Cigarette, Wholesl | 10 | 700 | 350 | 1050 | 8.57 | 17825.60 | 178256 | 891 |
| 75 | Cleaning/Pressing | 30 | 333 | 166 | 499 | 6.27 | 13041.60 | 391248 | 1956 |
| 75A | Cleaning/Pickup | 12 | 60 | 30 | 90 | 6.27 | 13041.60 | 156499 | 782 |
| 76 | Coal | 3 | 30 | 15 | 45 | 15.57 | 32385.60 | 97157 | 486 |
| 77 | Coal Hauling | 2 | 39 | 20 | 59 | 13.02 | 27081.60 | 54163 | 271 |
| 79 | Coffin | 4 | 270 | 135 | 405 | 15.57 | 32385.60 | 129542 | 648 |
| 80 | Collection | 10 | 575 | 288 | 863 | 9.70 | 20176.00 | 201760 | 1009 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 81 | Commission Merchan | 120 | 2820 | 1410 | 4230 | 12.74 | 26499.20 | 3179904 | 15900 |
| 82 | Concert | 2 | 20 | 10 | 30 | 12.74 | 26499.20 | 52998 | 265 |
| 83B | Money Lender | 1 | 100 | 50 | 150 | 19.50 | 40560.00 | 40560 | 203 |
| 84 | Contractor | 1979 | 72695 | 36348 | 109043 | 18.59 | 38667.20 | 76522389 | 382612 |
| 87 | Manufacturing | 69 | 1300 | 650 | 1950 | 12.54 | 26083.20 | 1799741 | 8999 |
| 91 | Deli | 36 | 350 | 175 | 525 | 12.85 | 26728.00 | 962208 | 4811 |
| *92 | Dentist | 281 | 5197 | 0 | 5197 | 28.16 | 58572.80 | 16458957 | 82295 |
| 93 | Detective Agency | 57 | 5350 | 2675 | 8025 | 12.46 | 25916.80 | 1477258 | 7386 |
| 94 | Film Developing | 1 | 5 | 3 | 8 | 16.60 | 34528.00 | 34528 | 173 |
| 97 | Elect, Gas Appliance | 72 | 940 | 470 | 1410 | 15.57 | 32385.60 | 2331763 | 11659 |
| 98 | Embalmer | 30 | 290 | 145 | 435 | 16.57 | 34465.60 | 1033968 | 5170 |
| *99 | Engineer | 345 | 6820 | 0 | 6820 | 21.02 | 43721.60 | 15083952 | 75420 |
| 102 | Firework | 5 | 85 | 43 | 128 | 15.57 | 32385.60 | 161928 | 810 |
| 104 | Fortuneteller | 2 | 60 | 30 | 90 | 16.57 | 34465.60 | 68931 | 345 |
| 105 | Fruit Dealer | 16 | 113 | 56 | 169 | 15.57 | 32385.60 | 518170 | 2591 |
| 106 | Gasoline Station | 168 | 11001 | 5500 | 16501 | 6.66 | 13852.80 | 2327270 | 11636 |
| 107 | Glass Plate Dealer | 6 | 175 | 88 | 263 | 20.36 | 42348.80 | 254093 | 1270 |
| 108 | Golf Course | 2 | 25 | 13 | 38 | 20.06 | 41724.80 | 83450 | 417 |
| 108A | Golf Course | 4 | 55 | 28 | 83 | 20.06 | 41724.80 | 166899 | 834 |
| 112 | Horse Dealer | 1 | 20 | 10 | 30 | 15.57 | 32385.60 | 32386 | 162 |
| 114 | Ice Factory | 1 | 35 | 18 | 53 | 15.57 | 32385.60 | 32386 | 162 |
| 115 | Hotel | 13 | 816 | 408 | 1224 | 12.85 | 26728.00 | 347464 | 1737 |
| 116 | Junk Dealer | 2 | 40 | 20 | 60 | 20.06 | 41724.80 | 83450 | 417 |
| 118 | Laundry | 46 | 459 | 229 | 688 | 12.46 | 25916.80 | 1192173 | 5961 |
| 118A | Laundry-Hand | 2 | 10 | 5 | 15 | 12.46 | 25916.80 | 51834 | 259 |
| 122 | Lumber Yard | 2 | 35 | 18 | 53 | 15.57 | 32385.60 | 64771 | 324 |
| 123 | Machine Shop | 27 | 270 | 135 | 405 | 13.79 | 28683.20 | 774446 | 3872 |
| 124 | Manicurist | 237 | 1100 | 550 | 1650 | 5.78 | 12022.40 | 2849309 | 14247 |
| 125 | Mattress Mfg | 85 | 988 | 493 | 1481 | 16.60 | 34528.00 | 2934880 | 14674 |
| *126 | Medical Doctor | 1867 | 45873 | 0 | 45873 | 78.85 | 164008.00 | 306202936 | 1531015 |
| 127 | Mimeographs | 2 | 60 | 30 | 90 | 16.60 | 34528.00 | 69056 | 345 |
| 131 | Monuments | 6 | 30 | 15 | 45 | 15.57 | 32385.60 | 194314 | 972 |
| 133A | Movies | 1 | 60 | 30 | 90 | 15.57 | 32385.60 | 32386 | 162 |
| 134 | Newstand | 38 | 180 | 90 | 270 | 15.57 | 32385.60 | 1230653 | 6153 |
| *135 | Optometrist | 88 | 1925 | 0 | 1925 | 16.57 | 34465.60 | 3032973 | 15165 |
| *136 | Chiropractor | 60 | 1200 | 0 | 1200 | 16.57 | 34465.60 | 2067936 | 10340 |
| 138 | Pawnbroker | 14 | 3500 | 1750 | 5250 | 15.57 | 32385.60 | 453398 | 2267 |



BEST AVAILABLE COPY

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 140 | Photographer | 58 | 783 | 391 | 1174 | 19.83 | 41246.40 | 2433538 | 12168 |
| 140A | Photographer | 70 | 675 | 338 | 1013 | 19.83 | 41246.40 | 2887248 | 14436 |
| 140B | Photographer | 2 | 7 | 4 | 11 | 19.83 | 41246.40 | 82493 | 412 |
| 141 | Musical Instruments | 2 | 100 | 50 | 150 | 15.57 | 32385.60 | 64771 | 324 |
| 141A | Musical Instruments | 1 | 13 | 6 | 19 | 15.57 | 32385.60 | 32386 | 162 |
| 141B | Musical Instruments | 8 | 160 | 80 | 240 | 15.57 | 32385.60 | 259085 | 1295 |
| 143 | Pistols Revolvers | 28 | 3050 | 1525 | 4575 | 15.57 | 32385.60 | 906797 | 4534 |
| 144 | Playing Cards | 30 | 60 | 30 | 90 | 12.74 | 26499.20 | 794976 | 3975 |
| 145 | Plumber | 132 | 1507 | 753 | 2260 | 12.59 | 26187.20 | 3456710 | 17284 |
| 145A | Plumber | 4 | 20 | 10 | 30 | 12.59 | 26187.20 | 104749 | 524 |
| 146 | Pool Table | 81 | 6188 | 3094 | 9282 | 12.74 | 26499.20 | 2146435 | 10732 |
| 147 | Race Track | 1 | 10 | 5 | 15 | 20.06 | 41724.80 | 41725 | 209 |
| 148 | Radio | 46 | 552 | 276 | 828 | 15.57 | 32385.60 | 1489738 | 7449 |
| *149 | Real Estate | 107 | 1335 | 668 | 2003 | 24.11 | 50148.80 | 5365922 | 26830 |
| 151 | Restaurant | 185 | 5111 | 2556 | 7667 | 12.85 | 26728.00 | 4944680 | 24723 |
| 152 | Dance Hall | 29 | 700 | 350 | 1050 | 12.74 | 26499.20 | 768477 | 3842 |
| 152A | Dance Hall-Other | 2 | 100 | 50 | 150 | 12.74 | 26499.20 | 52998 | 265 |
| 153 | Sandwich Shops | 128 | 575 | 288 | 863 | 12.85 | 26728.00 | 3421184 | 17106 |
| *155 | Scientist Naturopath | 23 | 230 | 0 | 230 | 27.12 | 56409.60 | 1297421 | 6487 |
| 156 | Sewing Machines | 6 | 150 | 75 | 225 | 15.57 | 32385.60 | 194314 | 972 |
| 156A | Sewing Machines | 1 | 10 | 5 | 15 | 15.57 | 32385.60 | 32386 | 162 |
| 158 | Shotguns | 63 | 482 | 240 | 722 | 15.57 | 32385.60 | 2040293 | 10201 |
| 159 | Skating Rinks | 1 | 25 | 5 | 30 | 12.74 | 26499.20 | 26499 | 132 |
| 160 | Solicitating Broker | 16 | 725 | 363 | 1088 | 22.42 | 46633.60 | 746138 | 3731 |
| 161 | Eyeglasses | 17 | 324 | 163 | 487 | 15.57 | 32385.60 | 550555 | 2753 |
| 162 | Stock Broker | 5 | 250 | 125 | 375 | 22.42 | 46633.60 | 233168 | 1166 |
| 163 | Carnival | 1 | 100 | 50 | 150 | 12.74 | 26499.20 | 26499 | 132 |
| 166 | Theater | 10 | 195 | 98 | 293 | 20.06 | 41724.80 | 417248 | 2086 |
| 167 | Ticket Scalper | 7 | 650 | 325 | 975 | 12.74 | 26499.20 | 185494 | 927 |
| 168 | Tourist Camp | 1 | 15 | 7 | 22 | 12.74 | 26499.20 | 26499 | 132 |
| 169 | Tractor Road Machine | 11 | 287 | 143 | 430 | 15.57 | 32385.60 | 356242 | 1781 |
| 172 | Transcient Dealer | 45 | 1003 | 502 | 1505 | 8.57 | 17825.60 | 802152 | 4011 |
| 172A | Transcient Dealer | 3 | 10 | 5 | 15 | 8.57 | 17825.60 | 53477 | 267 |
| 174B | Retail Peddler | 888 | 15113 | 7557 | 22670 | 8.57 | 17825.60 | 15829133 | 79146 |
| 174C | Retail Peddler | 10 | 950 | 475 | 1425 | 8.57 | 17825.60 | 178256 | 891 |
| 174D | Peddler | 1 | 100 | 50 | 150 | 8.57 | 17825.60 | 17826 | 89 |
| 176 | Vending Sales | 133 | 1377 | 688 | 2065 | 8.57 | 17825.60 | 2370805 | 11854 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 176A | Vending Sales | 2 | | | 2 | 8.57 | 17825.60 | 35651 | 178 |
| 176B | Vending Sales | 48 | 2390 | 1197 | 3590 | 8.57 | 17825.60 | 855629 | 4278 |
| 176C | Vending Sales | 1 | 5 | 3 | 8 | 8.57 | 17825.60 | 17826 | 89 |
| 177 | Cabinet Shop | 79 | 473 | 236 | 709 | 7.97 | 16577.60 | 1309630 | 6548 |
| *178 | Veterinarian | 70 | 350 | 0 | 350 | 16.57 | 34465.60 | 2412592 | 12063 |
| 179 | Warehouse | 1 | 25 | 13 | 38 | 12.47 | 25937.60 | 25938 | 130 |
| 179A | Warehouse | 1 | 100 | 50 | 150 | 12.47 | 25937.60 | 25938 | 130 |
| 315 | Chain Store | 124 | 1171 | 0 | 1171 | 12.47 | 25937.60 | 3216262 | 16081 |
| | | | | | | | | | |
| | **Totals** | **15762** | **$319,875** | **$110,436** | **$430,311** | | | **$728,024,024** | **$3,640,120** |

**County Ordinance License Issued for 96-97**

| License Schedule | Description | Number Issued | County Ordinance | Total License | **Average Hourly Wage | Total Annual Wage | Total Wages Per Ord Issued | Annual OT |
|---|---|---|---|---|---|---|---|---|
| C2 | Advertising | 4 | 525 | 525 | 22.35 | 46488.00 | 185952 | 930 |
| C5A | Agents, Dealers | 2118 | 63612 | 63612 | 12.74 | 26499.20 | 56125306 | 280627 |
| C5B | Business Office | 19 | 398 | 398 | 12.74 | 26499.20 | 503485 | 2517 |
| C6 | Aircraft | 1 | 50 | 50 | 15.57 | 32385.60 | 32386 | 162 |
| C7 | Bookkeeper | 98 | 3923 | 3923 | 10.28 | 21382.40 | 2095475 | 10477 |
| C9 | Auto Polishing | 93 | 3038 | 3038 | 16.78 | 34902.40 | 3245923 | 16230 |
| C9A | Auto Polishing Incide | 3 | 23 | 23 | 16.78 | 34902.40 | 104707 | 524 |
| C10 | Auto Drive It | 1 | 200 | 200 | 15.57 | 32385.60 | 32386 | 162 |
| C12 | Bakery | 2 | 100 | 100 | 5.94 | 12355.20 | 24710 | 124 |
| C13 | Bakery Goods | 10 | 353 | 353 | 5.94 | 12355.20 | 123552 | 618 |
| C14 | Barber Supplies | 9 | 425 | 425 | 15.57 | 32385.60 | 291470 | 1457 |
| C16 | Bootblacking | 7 | 50 | 50 | 16.78 | 34902.40 | 244317 | 1222 |
| C19 | Cemetary | 1 | 25 | 25 | 20.06 | 41724.80 | 41725 | 209 |
| C21 | Metallurgist Engineers | 11 | 1602 | 1602 | 14.31 | 29764.80 | 327413 | 1637 |
| C25 | Amusement | 1 | 100 | 100 | 20.06 | 41724.80 | 41725 | 209 |
| C27 | Court Reporting | 33 | 3380 | 3380 | 10.34 | 21507.20 | 709738 | 3549 |
| C29 | Curb Market Covered | 1 | 30 | 30 | 15.57 | 32385.60 | 32386 | 162 |
| C31 | Dental Depot | 14 | 444 | 444 | 16.53 | 34382.40 | 481354 | 2407 |
| C32 | Insecticides | 4 | 129 | 129 | 15.57 | 32385.60 | 129542 | 648 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| C32A | Exterminators | 15 | 248 | 248 | 16.73 | 34902.40 | 523536 | 2618 |
| C33 | Dress Shop | 140 | 6090 | 6090 | 15.57 | 32385.60 | 4533984 | 22670 |
| C34 | Prescription Shop | 1 | 161 | 161 | 23.46 | 48796.80 | 48797 | 244 |
| C35 | Employment Agency | 11 | 1900 | 1900 | 12.45 | 25896.00 | 284856 | 1424 |
| C38 | Florist | 143 | 5995 | 5995 | 11.75 | 24440.00 | 3494920 | 17475 |
| C40 | Guard Patrol | 29 | 460 | 460 | 6.40 | 13312.00 | 386048 | 1930 |
| C41 | Retail Food Store | 219 | 17854 | 17854 | 15.57 | 32385.60 | 7092446 | 35462 |
| C42 | Ice Cream | 22 | 383 | 383 | 15.57 | 32385.60 | 712483 | 3562 |
| C43 | Industrial Traffic Mgr | 1 | 50 | 50 | 22.48 | 46758.40 | 46758 | 234 |
| C44 | Hospital | 4 | 120 | 120 | 20.06 | 41724.80 | 166899 | 834 |
| C45 | Inspector | 2 | 45 | 45 | 20.64 | 42931.20 | 85862 | 429 |
| C47 | Jitneys | 1 | 15 | 15 | 14.12 | 29369.60 | 29370 | 147 |
| C48A | Junk Wagon | 2 | 50 | 50 | 20.36 | 42348.80 | 84698 | 423 |
| C49 | Landscape Gardener | 123 | 3414 | 3414 | 20.36 | 42348.80 | 5208902 | 26045 |
| C50 | Manufacturing | 28 | 780 | 780 | 12.54 | 26083.20 | 730330 | 3652 |
| C51 | Retail Merchandise | 1618 | 42021 | 42021 | 8.57 | 17825.60 | 28841821 | 144209 |
| C52 | Messenger Service | 5 | 48 | 48 | 6.74 | 14019.20 | 70096 | 350 |
| C52A | Messenger Service | 22 | 171 | 171 | 6.74 | 14019.20 | 308422 | 1542 |
| C52B | Messenger Service | 4 | 96 | 96 | 6.74 | 14019.20 | 56077 | 280 |
| C53 | Mortgage Loans | 16 | 536 | 536 | 19.50 | 40560.00 | 648960 | 3245 |
| C55 | Newspapers | 16 | 345 | 345 | 16.60 | 34528.00 | 552448 | 2762 |
| C57 | Newsboys | 2 | 15 | 15 | 5.34 | 11107.20 | 22214 | 111 |
| C59 | Oil Wholesale | 1 | 1046 | 1046 | 14.12 | 29369.60 | 29370 | 147 |
| C60 | Oil Auto Retail | 2 | 45 | 45 | 15.57 | 32385.60 | 64771 | 324 |
| C62 | Ore Stone Cement | 2 | 60 | 60 | 20.36 | 42348.80 | 84698 | 423 |
| C65 | Pet Shops | 24 | 345 | 345 | 8.57 | 17825.60 | 427814 | 2139 |
| C70 | Printing | 79 | 3804 | 3804 | 16.89 | 35131.20 | 2775365 | 13877 |
| C71 | Repair Shop | 213 | 3795 | 3795 | 7.73 | 16078.40 | 3424699 | 17123 |
| C72 | School | 85 | 1937 | 1937 | 12.45 | 25896.00 | 2201160 | 11006 |
| C75 | Tailoring | 94 | 2535 | 2535 | 12.74 | 26499.20 | 2490925 | 12455 |
| C76 | Taxicabs | 6 | 105 | 105 | 12.74 | 26499.20 | 158995 | 795 |
| C77 | Tree Pruning | 14 | 278 | 278 | 12.74 | 26499.20 | 370989 | 1855 |
| C78 | Undertakers | 2 | 230 | 230 | 12.74 | 26499.20 | 52998 | 265 |
| C80 | Watchmaker | 4 | 53 | 53 | 12.74 | 26499.20 | 105997 | 530 |
| C83 | Janitorial Service | 272 | 5565 | 5565 | 5.76 | 11980.80 | 3258778 | 16294 |
| *C89 | Real Estate Agent | 1575 | 38600 | 38600 | 21.99 | 45739.20 | 72039240 | 360196 |
| C90 | Insurance Agent | 38 | 991 | 991 | 22.70 | 47216.00 | 1794208 | 8971 |

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| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | C502 | Septic Tank | 8 | | [illegible] | [illegible] | [illegible] | 42348.80 | 338790 | 1694 |
| | C503 | Open on Sunday | 43 | | 1075 | 1075 | 12.74 | 26499.20 | 1139466 | 5697 |
| | C693 | Transient Dealer | 4 | | 1000 | 1000 | 12.74 | 26499.20 | 105997 | 530 |
| * | C900 | Real Estate Mun | 1684 | | 33680 | 33680 | 21.99 | 45739.20 | 77024813 | 385124 |
| | | **Totals** | **9004** | | **254593** | **254593** | | | **286592550** | **1432963** |
| | | **Grand Total** | **24766** | **$319,875** | **$365,029** | **$684,904** | | | **$1,014,616,574** | **$5,073,083** |
| | | | | | | | | | | |
| * | | **Less: Regulated** | | | | | **Average Hourly Wage was furnished by Alabama Dept | | | |
| | | **Professionals** | **7465** | **96556** | **72948** | **169504** | of Industrial Relations for the Birmingham Metro Area. | | | |
| | | | | | | | Metro area includes Jefferson, Blount, St Clair, and Shelby | | | |
| | | **Net Difference** | **17301** | **$223,319** | **$292,081** | **$515,400** | Counties | | | |
| | | | | | | | Average Hourly Wage for Jefferson County was furnished | | | |
| | | | | | | | by Metropolitan Development Board. | | | |

OTCOURT3.XLS

DEFENDANT'S EXHIBIT NO. 12

| | 96-97 Business Licenses issued to Sole Proprietors that are Regulated | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| License Section | License Description | Number Issued | State Amount | County Amount | Total License | **Average Hourly Wage | Total Annual Wage | Total Wages Per Lic Issued | Annual OT |
| *43 | Accountant, Auditor | 481 | 11675 | 0 | 11675 | 18.52 | 38521.60 | 18528890 | 92644 |
| *48 | Architect | 164 | 4088 | 0 | 4088 | 21.02 | 43721.60 | 7170342 | 35852 |
| *50 | Auctioneer | 31 | 775 | 0 | 775 | 16.57 | 34465.60 | 1068434 | 5342 |
| *71 | Certified Pub Acct | 689 | 17088 | 0 | 17088 | 40.14 | 83491.20 | 57525437 | 287627 |
| *92 | Dentist | 281 | 5197 | 0 | 5197 | 28.16 | 58572.80 | 16458957 | 82295 |
| *99 | Engineer | 345 | 6820 | 0 | 6820 | 21.02 | 43721.60 | 15083952 | 75420 |
| *126 | Medical Doctor | 1867 | 45873 | 0 | 45873 | 78.85 | 164008.00 | 306202936 | 1531015 |
| *135 | Optometrist | 88 | 1925 | 0 | 1925 | 16.57 | 34465.60 | 3032973 | 15165 |
| *136 | Chiropractor | 60 | 1200 | 0 | 1200 | 16.57 | 34465.60 | 2067936 | 10340 |
| *149 | Real Estate | 107 | 1335 | 668 | 2003 | 24.11 | 50148.80 | 5365922 | 26830 |
| *155 | Scientist Naturopath | 23 | 230 | 0 | 230 | 27.12 | 56409.60 | 1297421 | 6487 |
| *178 | Veterinarian | 70 | 350 | 0 | 350 | 16.57 | 34465.60 | 2412592 | 12063 |
| | Totals | 4206 | $96,556 | $668 | $97,224 | | | $436,215,790 | $2,181,079 |
| | County Ordinance License Issued for 96-97 | | | | | | | | |
| License Schedule | Description | Number Issued | | County Ordinance | Total License | **Average Hourly Wage | Total Annual Wage | Total Wages Per Ord Issued | Annual OT |
| *C27 | Court Reporter | 33 | | 3380 | 3380 | 10.34 | 21507.2 | 709738 | 3549 |
| *C89 | Real Estate Agent | 1575 | | 38600 | 38600 | 21.99 | 45739.20 | 72039240 | 360196 |
| *C900 | Real Estate Mun | 1684 | | 33680 | 33680 | 21.99 | 45739.20 | 77024813 | 385124 |
| | Totals | 3259 | | 72280 | 72280 | | | 149064053 | 748869 |
| | SUB TOTAL | 7465 | $96,556 | $72,948 | $169,504 | | | $585,279,843 | $2,929,948 |

**Average Hourly Wage was furnished by Alabama Dept of Industrial Relations for the Birmingham Metro Area. Metro area includes Jefferson, Blount, St Clair, and Shelby Counties

Average Hourly Wage for Jefferson County was furnished by Metropolitan Development Board.

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| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| ***** | Attorney | *3629 | 0 | 0 | 0 | 48.94 | 101795.20 | 369414781 | 1847074 |
| | *Information supplied by State Bar Assn in Montgomery | | | | | | | | |
| | | | | | | | | | |
| | GRAND TOTAL | | | | | | | $954,694,624 | $4,777,022 |